

Policy Committee Meeting

September 21, 2017

**TEACHER RETIREMENT SYSTEM OF TEXAS MEETING
BOARD OF TRUSTEES
AND
POLICY COMMITTEE**

(Committee Chair and Members: Mr. Corpus, Chair; Mr. Colonna, Mr. Elliott, and Mr. Kelly)

*All or part of the September 21, 2017, meeting of the TRS Policy Committee and Board of Trustees may be held by telephone or video conference call as authorized under Sections 551.130 and 551.127 of the Texas Government Code. The Board intends to have a quorum and the presiding officer of the meeting physically present at the following location, which will be open to the public during the open portions of the meeting: **1000 Red River, Austin, Texas 78701 in the TRS East Building, 5th Floor, Boardroom.***

AGENDA

**September 21, 2017 – 2:45 p.m.
TRS East Building, 5th Floor, Boardroom**

1. Call roll of Committee members.
2. Consider the approval of the proposed minutes of the June 1, 2017 committee meeting – Chair David Corpus.
3. Conduct the required review of the Resolution Regarding Correction of Errors and Other Edits – Rebecca Merrill.
4. Consider updates to the Policy Review Schedule – Rebecca Merrill.
5. Consider authorizing for public comment publication in the *Texas Register* proposed new or amended TRS rules in Title 34, Part 3 of the Texas Administrative Code – Rebecca Smith and Clarke Howard:
 - A. § 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense
 - B. § 29.91, relating to Restoring Forfeited Benefits After Conviction is Overturned.
 - C. § 41.1, relating to Initial Enrollment Periods for the Health Benefits Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)
 - D. § 41.5, relating to Payments of Contributions
 - E. § 41.7, relating to Effective Date of Coverage
 - F. § 41.12, relating to Eligibility for the Alternative Plan for Medicare-Eligible Participants

NOTE: The Board of Trustees (Board) of the Teacher Retirement System of Texas will not consider or act upon any item before the Policy Committee (Committee) at this meeting of the Committee. This meeting is not a regular meeting of the Board. However, because the full Committee constitutes a quorum of the Board, the meeting of the Committee is also being posted as a meeting of the Board out of an abundance of caution.

6. Consider recommending to the Board adoption of the following new, amended, or repealed TRS rules in Title 34, Part 3 of the Texas Administrative Code – Rebecca Smith and Clarke Howard:

- A. § 23.9, relating to Communicating Information Electronically
- B. § 25.10, relating to Student Employment
- C. § 25.28, relating to Payroll Report
- D. § 25.173, relating to Correction of Ineligible Participation in TRS
- E. § 25.191, relating to Time Period at Retirement to Complete Purchase of Service Credit
- F. § 31.2, relating to Monthly Certified Statement
- G. § 31.11, relating to Employment Resulting in Forfeiture of Service Retirement Annuity
- H. § 31.12, relating to Exceptions to Forfeiture of Service Retirement Annuity
- I. § 31.13, relating to Substitute Service
- J. § 31.14, relating to One-half Time Employment
- K. § 31.15, relating to Full-Time Employment after 12 Consecutive Month Break in Service
- L. § 31.31, relating to Employment Resulting in Forfeiture of Disability Retirement Annuity
- M. § 31.32, relating to Half-time Employment Up to 90 Days
- N. § 31.33, relating to Substitute Service up to 90 Days
- O. § 31.34, relating to Employment Up to Three Months on a One-Time Only Trial Basis
- P. § 31.41, relating to Return to Work Employer Pension Surcharge
- Q. § 41.2, relating to Additional Enrollment Opportunities
- R. § 41.6, relating to Required Contributions from Public Schools
- S. § 41.10, relating to Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)
- T. §41.33, relating to Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program
- U. § 41.91, relating to Certification of Insurance Coverage
- V. § 43.4, relating to Decisions Subject to Review by an Adjudicative Hearing

TAB 2

Minutes of the Policy Committee

June 1, 2017

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on June 1, 2017, in the boardroom located on the fifth floor of the TRS East Building offices at 1000 Red River Street, Austin, Texas.

Committee members present:

Mr. David Corpus, Chair
Mr. Joe Colonna
Mr. John Elliott
Mr. David Kelly

Other Trustees:

Ms. Karen Charleston
Dr. Greg Gibson
Mr. Chris Moss

Others present:

Brian Guthrie, TRS
Rebecca Merrill, TRS
Carolina de Onis, TRS
Heather Traeger, TRS
Katherine Farrell, TRS
Dan Pawlisch, Aon Hewitt
Ann Fickel, TRTA
Philip Mullins, TSEU

Policy Committee Chair Mr. Corpus called the meeting to order at 3:46 p.m.

1. Call roll of Committee members.

Ms. Farrell called the roll. A quorum was present.

2. Consider the approval of the proposed minutes of the April 6, 2017 committee meeting – David Corpus.

On a motion by Mr. Kelly, seconded by Mr. Elliot, the proposed minutes for the April 6, 2017, Policy Committee meeting were approved as presented.

3. Consider authorizing for public comment publication in the *Texas Register* proposed rule amendments to Chapter 53 of TRS' rules in Title 34, Part 3, of the Texas Administrative Code– Rebecca Merrill; Dan Pawlisch, Aon Hewitt.

Mr. Moss recused himself from this discussion and excused himself from the room.

Ms. Rebecca Merrill provided an overview of the 403(b) program. She said the program consists of two primary components, certification of companies that seek to sell their annuities or mutual funds to Texas educators through salary reduction agreements, and the registration of products by certified

companies. Ms. Merrill stated that the Board certifies or adopts rules to certify companies to register products. She also stated that the Board is charged with adopting fee caps registered companies can charge for product purchase, administration and expense. Ms. Merrill noted that TRS currently has 76 certified companies and over 11,000 active registered products and investment options.

Ms. Merrill stated that they are proposing to improve the rules within the construct created by the Legislature. She noted that this process is a part of the statutory rule review, which is required of all of TRS's rules every four years. Ms. Merrill commented on an initiative to complete the statutory rule review for the 403(b) rules in September.

Ms. Merrill noted that the proposed amendments are categorized in two ways: non-substantive and substantive. Ms. Merrill stated one non-substantive change being proposed is restructuring the chapter. Ms. Merrill noted that this was done with the intent to clean up the chapter. She also noted that they want to clarify the company and product structure. This would ensure the terms being used were clear and consistent. Substantively, Ms. Merrill proposed asking for additional disclosures for non-annuity companies and their application, and adjusting fee caps. Ms. Merrill also proposed authorizing an increase in the registration fee. Ms. Merrill stated that the current registration fee certifies a company to register as many products as they want for a five-year period. Ms. Merrill stated that the increased fee would help recover administrative costs incurred with updating the product registration system.

Ms. Merrill provided more detail about clarifying the company structure. Ms. Merrill explained that the statute and rules conflate proprietary companies with platform companies. Ms. Merrill defined proprietary companies as those that sell their own annuities or mutual funds, and platform companies as those that sell a proprietary company's mutual funds. Ms. Merrill also emphasized clearing up the product registration component of the rule in order to ensure consistency of meaning and use. Ms. Merrill noted the importance of adding investment options into the rules as they are not currently included.

Ms. Merrill provided more detail about the proposal to require companies to disclose what types of customer service they provide in their application. Ms. Merrill stated that the statute requires a minimum level of customer service for annuity companies, but has no requirements for non-annuity companies. She noted that requiring non-annuity companies to disclose the types of customer service they provide will aid in better understanding of the market.

Mr. Dan Pawlisch provided an overview of the six major categories of fee caps that exist within the 403(b) program. Mr. Pawlisch proposed the elimination of any front-end or back-end sales loads and varying the asset-based fee by asset class. He also proposed lowering the surrender or withdrawal fee to 5% to mimic the downward trend of the fee in the marketplace. Mr. Pawlisch proposed a reduction in the loan initiation fee. He also proposed maintaining the annual fixed dollar fee, and continuing to allow additional fees.

Mr. Pawlisch provided more detail about varying the asset-based fee based on the six asset classes. Mr. Pawlisch explained the asset-based fee provides the opportunity for the asset manager to buy stocks and bonds that underlie the actual investments in the 403(b) plan, and also serves as the point of administrative costs. Mr. Pawlisch noted that the maximum annual asset-based fee cap is a summation of those two underlying components. Mr. Pawlisch explained that under the proposed rules transactional fees would be defined. Mr. Pawlisch listed the various fees that would fall under the transactional fees category. Mr. Pawlisch noted that under the current rules, the optional fees are

allowed to exceed the annual asset-based fee cap. He explained that under the proposed rules any optional fees would fall under the annual asset-based fee caps, no longer allowing for overages. Mr. Pawlisch stated under the new product registration process, vendors would have to report any optional fees.

Ms. Merrill asked the Board to authorize public comment publication in the *Texas Register*. Ms. Merrill mentioned holding another informal stakeholder meeting at TRS on June 28, 2017. Ms. Merrill provided a brief summary of the informal stakeholder meeting held the previous winter. Ms. Merrill summarized her comments by proposing to update and amend the product registration system when the rules finally pass, proposing the registration period to open in April 2018. She projected that in April 2018 companies could begin registering products with lowered fee caps, and in May 2018 the new list of active products would go live. Ms. Merrill mentioned creating a legacy list to prevent the abrogation of existing contracts.

Ms. Merrill referenced the request for additional \$225,000 for 403(b) program in the FY18 budget. Ms. Merrill asked for the authority to hire an additional FTE if needed to support the program.

In response to Mr. Corpus's inquiry, Ms. Merrill outlined the complaint process for companies as required by the statute, should customer complaints about a certified company arise.

On a motion by Mr. Kelly, seconded by Mr. Elliot, the committee unanimously voted to authorize public comment publication in the *Texas Register* of proposed amendments to the rules of Chapter 53, Title 34 of the Texas Administrative Code as presented by staff.

The Policy Committee adjourned at 4:14 p.m.

Approved by the Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas, on August 25, 2017.

Katherine H. Farrell
Secretary of the TRS Board of Trustees

Date

TAB 3



Memorandum

DATE: September 21, 2017

TO: TRS Policy Committee

FROM: Rebecca Merrill, Director of Strategic Initiatives

Through: Brian Guthrie, Executive Director and Ken Welch, Deputy Director

RE: Review of the Correction of Errors and Other Edits Resolution

ACTION REQUESTED

Staff asks the Policy Committee to:

- Conduct the comprehensive review of the Resolution Regarding Correction of Errors and Other Edits (Resolution), which is slated for its five year review under the Policy Review Schedule; and
- Maintain the Resolution with no recommended changes, continuing with the five year review cycle.

BACKGROUND AND DISCUSSION

Pursuant to the Policy Review Schedule, a review of the Resolution Regarding Correction of Errors and Other Edits occurs every five years. In 2012, the Board adopted the Resolution which provides the Executive Director and Deputy Director the authority to make technical non-substantive corrections or to clarify the action of the Board in order to reflect accurately the intent of the Board without having to return to the Board for approval. The delegation of such authority has improved administrative efficiency. The Resolution has been utilized for the following:

Date of Correction	Board Action	Technical Non-substantive Correction
July 2017	Resolution Adjusting the Plans Offered under TRS-Care and Approving Premium Rate and Benefit Plan Designs	Changed max. out of pocket expense amts for individual and family (in member favor) to reflect amts required to qualify as IRS HSA plan. Plans qualifying as IRS HSA plan was Board's intent.
Oct. 2016	Investment Policy Statement and General Authority Resolution	Correct grammatical, formatting and typographical errors. Included FICC Trading Group to incorporate the authority discussed by the Board.
June 2016	Code of Ethics for Contractors	Correct formatting and typographical errors.
Feb. 2012	TRS Vision Statement	Correct grammatical error

Staff recommends maintaining the Resolution with no recommended changes for it continues to serve the purpose for which it was adopted. If the Committee finds no changes to the Resolution, then no further action is required from the Committee.

Resolution Regarding Correction of Errors and Other Edits

September 2017 ~~February, 2012~~

WHEREAS, the Board of Trustees (the “Board”) of the Teacher Retirement System of Texas (“TRS”) desires to express its intent and authorization for staff to modify resolutions, motions, policies, rules, or a written document adopted at any time by the Board for any purpose and on any topic, provided that the sole purpose of the staff’s modification is to make technical non-substantive corrections or to clarify the action of the Board in order to reflect accurately the intent of the Board or to comply with publication requirements; now, therefore, be it

RESOLVED, That, with regard to a resolution, motion, policy, rule, or a written document adopted previously or hereafter by the Board for any purpose and on any topic, the staff is authorized (i) to make technical non-substantive corrections thereto, such as to correct syntax, grammar, numbering, punctuation, formatting, mathematical, and typographical errors; and (ii) to substitute the intended option or language or to add or to delete a word or phrase when such substitution, addition, or deletion is necessary to correct an inadvertent mistake, including without limitation identifying the wrong version of a document or the wrong section number of a rule, statute, or document, and thereby clarify the action of the Board to reflect accurately the Board’s intent either as such intent is clearly and unequivocally expressed in the records evidencing the Board’s deliberation of the matter or is necessarily implied from all the relevant circumstances; and (iii) to work with the Office of the Secretary of State in preparing and filing rules and related documents that must be filed and to make any technical changes required by law or by the Secretary of State for publication of Board-adopted rules; and

RESOLVED FURTHER, That the Executive Director or the Deputy Director is authorized and directed to exercise his judgment and discretion in evaluating whether any correction, substitution, addition, or deletion is warranted under the circumstances and should be implemented by staff or, instead, brought to the attention of the Board for further review and consideration, it being the expectation of the Board that the authority granted by these resolutions will be used to correct manifest errors or comply with publication requirements and to avoid cluttering the Board’s agenda with such evident clarifications and ministerial edits; and such revised version of the resolution, motion, policy, rule, or written document as modified by staff under the authority of these resolutions shall constitute the version adopted by the Board.

TAB 4



Memorandum

DATE: September 21, 2017
TO: TRS Policy Committee
FROM: Rebecca Merrill, Director of Strategic Initiatives
Through: Brian Guthrie, Executive Director and Ken Welch, Deputy Director
RE: Review of the Correction of Errors and Other Edits Resolution

ACTION REQUESTED

Staff asks the Policy Committee to:

- Conduct the review of TRS Board policy review schedule and adopt the proposed updates.

BACKGROUND AND DISCUSSION

TRS Board Bylaws Subsection 3.1.5(c) provides that the Policy Committee (“Committee”) is to adopt and follow a plan of review for each fiscal year to ensure that all written TRS Board policies are reviewed periodically. To accomplish this requirement, the Committee has adopted the Policy Review Schedule (“Schedule”), which provides for the regular review of all written board policies and is to be adopted every September.

Included in your materials are “marked” and “clean” copies of the Schedule. At the Committee meeting, staff will be asking the Committee to adopt the updates to the Schedule.

The Schedule is only adopted at the Policy Committee level. Therefore, at the September meeting, the Policy Committee will consider updating the Schedule but will not make a recommendation on the matter to the full Board.

**TEACHER RETIREMENT SYSTEM OF TEXAS
POLICY REVIEW SCHEDULE
APPROVED BY THE POLICY COMMITTEE SEPTEMBER ~~21~~, 2016~~7~~**

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEW ⁱ	DATE TO BEGIN NEXT REVIEW ⁱⁱ
ADMINISTRATIVE				
Mission Statement	Executive Director; Legal	2 years	November 2015	November 2017
Authorization to Approve and Sign Vouchers	Financial; Legal	3 years	April 2016	April 2019
Performance Incentive Pay Plan	Executive Director; Human Resources; Legal	1 year	June 201 6 <u>7</u>	June 201 7 <u>8</u>
	Investments; Human Resources; Legal		September 201 6 <u>7</u>	September 201 7 <u>8</u>
Resolution Regarding Correction of Errors and Other Edits	Executive Director	5 years	February 2012 <u>August 2017</u>	April 2017 <u>April 2022</u>

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS		DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Rules of the Board of Trustees – Rule Review	Legal; Finance; Benefits	4 years ⁱⁱⁱ	Chapter 53	December 2013 ^{iv}	June 2017 ^v
			Chapters 21-51	November 2014 ^{vi}	March 2018 ^{vii}
Litigation Policy	General Counsel	3 years		March 2015	March 2018
Policy on Negotiated Rulemaking and Alternative Dispute Resolution	Executive Director; Legal	5 years		June 2013	June 2018
Procurement Policy	General Counsel	3 years		June 2015	June 2018
At Will Employment	Human Resources; Legal	10 years		September 2013	September 2023
BOARD GOVERNANCE & ETHICS					
Bylaws of the Board of Trustees	Legal	4 years		September 2014	September 2018
Board Training Policy	Executive Director; Human Resources	4 years		November 2014	November 2018

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Trustees External Communication Policy	Communications	5 years	March 2014	March 2019
Trustee Ethics Policy and Position Description	Legal	4 years	December 2013	December 2017
EMPLOYEE & VENDOR ETHICS				
Designation of Key Employees	Executive Director	2 years	November 2015	November 2017
Employee Ethics Policy	Legal	4 years	December 2013	December 2017
Conflict of Interest Disclosure Statement (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Ethics Compliance Statement for Employees (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Disciplinary Action Disclosure Statement (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Code of Ethics for Contractors	Legal	4 years	March 2015	March 2019
Contractor Annual Ethics Compliance Statement	Legal	4 years	March 2015	March 2019

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Expenditure Reporting Memorandum	Legal	4 years	March 2015	March 2019
Expenditure Reporting Form for Contractors	Legal	4 years	March 2015	March 2019
Disclosure Statement for Brokers and Financial Advisors and Financial Providers	Legal	4 years	March 2015	March 2019
INVESTMENTS				
General Authority Resolution (GAR)	Financial; Investments	2 years	September 2016	September 2018
Investment Policy Statement	Investments	2 years	September 2016	September 2018
Soft Dollar <u>Commission Credit</u> Policy	Investments	3 years	December 201 3 <u>6</u>	December 201 6 <u>9</u>
Proxy Voting Policy	Investments	3 years	December 201 3 <u>6</u>	December 201 6 <u>9</u>
Securities Lending Policy	Financial; Investments	3 years	December 201 3 <u>6</u>	December 201 6 <u>9</u>

ⁱ Reviews scheduled or rescheduled to begin and to end at the meeting when the current Policy Review Schedule is approved are assumed to have been completed at that meeting, so that date is shown in this column, "Date of Last Policy Committee Comprehensive Review."

ⁱⁱ Initial review and discussion of the applicable policy occurs at the Board committee level on or about the date listed. Reviews may continue throughout one or more subsequent meetings.

ⁱⁱⁱ Government Code § 2001.039 requires a comprehensive rule review every four years. TRS reviews its rules by chapter.

^{iv} The last four-year review of Chapter 53 of TRS' rules was completed on December 18, 2013.

^v The date to begin the next rule review of Chapter 53 is based on the lead time needed to timely complete the review. The next review of Chapter 53 must be completed by December 18, 2017.

^{vi} The last review of the rules in Chapters 21-51 was completed on November 24, 2014.

^{vii} The next review of Chapters 21-51 must be completed by November 24, 2018.

**TEACHER RETIREMENT SYSTEM OF TEXAS
POLICY REVIEW SCHEDULE
APPROVED BY THE POLICY COMMITTEE SEPTEMBER 21, 2017**

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
ADMINISTRATIVE				
Mission Statement	Executive Director; Legal	2 years	November 2015	November 2017
Authorization to Approve and Sign Vouchers	Financial; Legal	3 years	April 2016	April 2019
Performance Incentive Pay Plan	Executive Director; Human Resources; Legal	1 year	June 2017	June 2018
	Investments; Human Resources; Legal		September 2017	September 2018
Resolution Regarding Correction of Errors and Other Edits	Executive Director	5 years	August 2017	April 2022

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS		DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Rules of the Board of Trustees – Rule Review	Legal; Finance; Benefits	4 years ⁱⁱⁱ	Chapter 53	December 2013 ^{iv}	June 2017 ^v
			Chapters 21-51	November 2014 ^{vi}	March 2018 ^{vii}
Litigation Policy	General Counsel	3 years		March 2015	March 2018
Policy on Negotiated Rulemaking and Alternative Dispute Resolution	Executive Director; Legal	5 years		June 2013	June 2018
Procurement Policy	General Counsel	3 years		June 2015	June 2018
At Will Employment	Human Resources; Legal	10 years		September 2013	September 2023
BOARD GOVERNANCE & ETHICS					
Bylaws of the Board of Trustees	Legal	4 years		September 2014	September 2018
Board Training Policy	Executive Director; Human Resources	4 years		November 2014	November 2018

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Trustees External Communication Policy	Communications	5 years	March 2014	March 2019
Trustee Ethics Policy and Position Description	Legal	4 years	December 2013	December 2017
EMPLOYEE & VENDOR ETHICS				
Designation of Key Employees	Executive Director	2 years	November 2015	November 2017
Employee Ethics Policy	Legal	4 years	December 2013	December 2017
Conflict of Interest Disclosure Statement (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Ethics Compliance Statement for Employees (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Disciplinary Action Disclosure Statement (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Code of Ethics for Contractors	Legal	4 years	March 2015	March 2019
Contractor Annual Ethics Compliance Statement	Legal	4 years	March 2015	March 2019

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Expenditure Reporting Memorandum	Legal	4 years	March 2015	March 2019
Expenditure Reporting Form for Contractors	Legal	4 years	March 2015	March 2019
Disclosure Statement for Brokers and Financial Advisors and Financial Providers	Legal	4 years	March 2015	March 2019
INVESTMENTS				
General Authority Resolution (GAR)	Financial; Investments	2 years	September 2016	September 2018
Investment Policy Statement	Investments	2 years	September 2016	September 2018
Commission Credit Policy	Investments	3 years	December 2016	December 2019
Proxy Voting Policy	Investments	3 years	December 2016	December 2019
Securities Lending Policy	Financial; Investments	3 years	December 2016	December 2019

ⁱ Reviews scheduled or rescheduled to begin and to end at the meeting when the current Policy Review Schedule is approved are assumed to have been completed at that meeting, so that date is shown in this column, "Date of Last Policy Committee Comprehensive Review."

ⁱⁱ Initial review and discussion of the applicable policy occurs at the Board committee level on or about the date listed. Reviews may continue throughout one or more subsequent meetings.

ⁱⁱⁱ Government Code § 2001.039 requires a comprehensive rule review every four years. TRS reviews its rules by chapter.

^{iv} The last four-year review of Chapter 53 of TRS' rules was completed on December 18, 2013.

^v The date to begin the next rule review of Chapter 53 is based on the lead time needed to timely complete the review. The next review of Chapter 53 must be completed by December 18, 2017.

^{vi} The last review of the rules in Chapters 21-51 was completed on November 24, 2014.

^{vii} The next review of Chapters 21-51 must be completed by November 24, 2018.

TAB 5



Legal & Compliance

Memorandum

DATE: September 1, 2017

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Authorization to publish proposed new rules § 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense and § 29.91, relating to Restoring Forfeited Benefits After Conviction Is Overturned

BACKGROUND INFORMATION

Staff asks the Policy Committee to authorize publication of two new rules in Chapter 29, relating to Benefits. Specifically, staff proposes new rules § 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense and § 29.91, relating to Restoring Forfeited Benefits After Conviction is Overturned. The proposed new rules would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption at the December 2017 meeting.

Proposed new rule § 29.90 addresses Senate Bill 7 which requires that if a defendant who is or was an employee of a public primary or secondary school is convicted of a qualifying felony of which the victim is a student, the defendant forfeits the right to receive any service retirement benefits payable by TRS. Proposed new rule § 29.91 addresses a requirement in the same bill providing that benefits must be restored to the defendant when the conviction is overturned on appeal or the defendant meets the requirements for innocence under § 103.001(a)(2), Civil Practices and Remedies Code. The requirements of the bill take effect on the effective date of the rules adopted by the Board of Trustees. Senate Bill 7 requires the Board of Trustees to adopt rules necessary to implement the new section of the law, § 824.009, Government Code, no later than December 31, 2017.

SUMMARY OF NEW RULES**§ 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense**

Senate Bill 7 was passed during the regular session of the 85th Legislature and added § 824.009, Government Code, to the TRS plan terms. The new statute addresses when a person who is a member or retiree of TRS forfeits the right to receive service retirement benefits by being convicted of a felony under § 21.02, Penal Code, relating to continuous sexual abuse of young child or children; § 21.12, Penal Code, relating to improper relationship between educator and student; § 22.011, Penal Code, relating to sexual assault; or § 22.021, Penal Code, relating to aggravated sexual assault, of which a student is the victim and the crime occurred while the defendant was employed by a TRS-covered employer. The proposed new rule details how TRS will comply with the new statute.

The proposed new rule requires that upon receipt of notice of judgment from a state or federal district court, a district attorney or U.S. Attorney, or the defendant's employer that includes the information required for TRS to determine that the defendant's benefits are forfeited under § 824.009, TRS will either terminate the distribution of monthly service retirement benefits to the defendant if the defendant has retired or refund the balance of accumulated contributions in the member account to the defendant if he/she has not retired. Because the statute requires that benefits payable to an alternate payee under certain domestic relations orders are not affected by the defendant's ineligibility to receive a retirement annuity, the proposed new rule addresses how TRS will ensure that the alternate payee receives the benefits due under the qualified domestic relations order (QDRO).

The proposed new rule attempts to acknowledge the fine line between designing the terms of the plan which is the purview of the Legislature and administering the terms of the plan which is the responsibility of TRS, when the language of the bill did not fully delineate how TRS was to implement each situation arising under the bill. It may be helpful to request clarification of certain parts of the bill in future legislative sessions.

§ 29.91, relating to Restoring Forfeited Benefits After Conviction is Overturned

This proposed new rule addresses how benefits will be restored to a person whose conviction identified in § 29.90 is overturned or who meets the requirements for innocence under § 103.001(a)(2), Civil Practices and Remedies Code. The new rule addresses how annuity payments that were forfeited will be restored to the member and the amount of the benefit if the annuities were divided based on the terms of a qualifying QDRO. It also distinguishes between annuities that were forfeited in the past and annuities that are due in the future. Annuities that were forfeited in the past must immediately be paid to the person along with interest, while annuities that are due in the future may be paid only upon repayment by the person of the accumulated contributions distributed on his/her behalf under § 29.90. The proposed new rule also addresses what benefits will be paid to certain alternate payees. Because Senate Bill 7 specifically addresses QDRO's in place before September 1, 2017 and QDRO's entered pursuant to § 824.009, but does not address QDRO's entered after September 1 2017 but not pursuant to § 824.009, there is a difference in how payments to alternate payees under the different QDRO's are affected.



Legal and Compliance

Memorandum

DATE: September 6, 2017

TO: Policy Committee of the TRS Board of Trustees

FROM: Wm. Clarke Howard, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Proposed Amendments to Chapter 41
Subchapter A, TRS-Care Rules 41.1, 41.5, 41.7, and 41.12

INTRODUCTION

Chapter 41 (Health Care and Insurance Programs) addresses (i) in subchapter A, various aspects of the TRS-Care health benefits program, (ii) in subchapter B, various aspects of long-term care, disability, and life insurance administered by TRS, (iii) in subchapter C, various aspects of the TRS-ActiveCare health benefits program, and (iv) in subchapter D, the responsibilities of school districts that do not participate in TRS-ActiveCare to determine the comparability of the health coverage offered to their respective employees.

Staff is presenting to the Policy Committee (the “Policy Committee”) of the TRS Board of Trustees (the “Board”) amendments to existing TRS-Care rules §§ 41.1, 41.5, and 41.7, and a new TRS-Care rule § 41.12 that addresses eligibility for the new “Alternative Plan” that will be offered to Medicare-eligible enrollees of TRS-Care, beginning on January 1, 2018. These proposed amendments and new rule are marked in Attachment 1 below.

REQUESTED ACTION

In part, to implement recent legislation passed by the Texas legislature, Staff requests the Policy Committee authorize public comment publication of the proposed amendments to existing TRS-Care rules §§ 41.1, 41.5, and 41.7, and public comment publication of the newly proposed TRS-

Care rule § 41.12 in the *Texas Register*. At this time, this course of action does not seek final adoption of these rules. The public will have at least 30 days to comment on the proposed rule amendments and the proposed, new rule. After the public comment period, the proposed amendments to these three existing TRS-Care rules and the new TRS-Care rule § 41.12 will be brought before the Policy Committee and the Board to consider final adoption as permanent rules, during the December 2017 meetings.

BACKGROUND OF THE REQUESTED ACTION

TRS-Care -- §41.1, entitled “Initial Enrollment Periods for the Health Benefit Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)”:

The proposed changes to subsections (c) and (d) of §41.1 address proposed upcoming changes to the TRS-Care plans that will take effect in early January of 2018.

For the sake of consistency, the proposed changes to subsection (c) provide that the initial enrollment period for surviving spouses and surviving dependent children of a deceased retiree shall be similar to the initial enrollment periods of an eligible service retiree (under subsection (a)) and an eligible disability retiree (under subsection (b)) of this rule. The same can be said of the proposed changes to subsection (d) with regard to the proposed initial enrollment period for surviving spouses and surviving dependent children of a deceased active member. This said, TRS-Care will continue its current practice of providing advance written notice of these initial enrollment periods to surviving spouses and surviving dependent children that are known to TRS.

TRS-Care -- §41.5, entitled “Payment of Contributions”:

The proposed changes to subsections (e) and (h) of §41.5 address upcoming changes to the TRS-Care plans that are being implemented in response to recent legislation. Beginning on January 1, 2018, there will no longer be a free TRS-Care plan (*i.e.*, TRS-Care 1) and there will no longer be two other levels of coverage; the TRS-Care 2 and TRS-Care 3 plans are being eliminated. Accordingly, failure to timely pay the full amount of a required contribution for coverage of a retiree or a surviving spouse will result in termination of coverage under TRS-Care. TRS will no longer have the option to downgrade the retiree’s or surviving spouse’s coverage to a free TRS-Care plan. This said, consistent with current practices, TRS-Care will continue to work with retirees and surviving spouses over a period of months in an effort to bring their balances current before termination of coverage occurs.

TRS-Care -- §41.7, entitled “Effective Date of Coverage”:

The language in subsection (b) is being deleted because recent legislation has repealed Section 1575.1581 of the Insurance Code, effective January 1, 2018.

The proposed substantive changes to subsection (d) of §41.7 address upcoming changes to the TRS-Care plans that are being implemented in response to recent legislation. As noted above, beginning on January 1, 2018, there will no longer be multiple levels of coverage in TRS-Care. Therefore, the reference to “level[s]” of coverage” is no longer appropriate. Also, with upcoming eligibility requirements, the ability of surviving spouses and surviving dependent children to remain in a given plan will be subject to the applicable eligibility requirements of the given plan.

The proposed substantive changes to subsection (h) of §41.7 are in response to recent legislation which, effective January 1, 2018, replaces the current Age 65 enrollment opportunity with a broader, new Age 65 enrollment opportunity. The effective date of coverage will be (1) the first day of the month following the month of the retiree's or surviving spouse's 65th birthday if the application for coverage is received before or during the month of the retiree's or surviving spouse's 65th birthday; or (2) the first day of the month following the receipt of the application if the application for coverage is received after the month of the retiree's or surviving spouse's 65th birthday but within the enrollment period.

In subsection (i) of §41.7, the addition of the two references to Medicare Part B is needed because, effective January 1, 2018, a participant will be eligible for the Medicare Advantage plan if the participant only has Medicare Part B. Accordingly, TRS-Care will begin adjusting the costs of coverage for participants upon receiving proof of enrollment not only in Medicare Part A but also in Medicare Part B. The re-lettering of the references to the last three subsections of §41.7 result from the proposed elimination of subsection (j), discussed immediately below.

Staff is proposing the removal of the current subsection (j) of §41.7 because, as noted above, beginning on January 1, 2018, there will no longer be different levels of coverage (*i.e.*, plans with reduced levels of coverage). The three existing levels of coverage, embodied in the TRS-Care 1, TRS-Care 2, and TRS-Care 3 plans, are being eliminated at the end of this current plan year.

In the newly re-lettered subsection (j) of §41.7, the proposed changes provide that all retirees, surviving spouses, and surviving dependent children may cancel their TRS-Care coverage by submitting an appropriate notice of cancellation form. Cancellations will be effective on the later of: (1) the first day of the month following TRS-Care’s receipt of the completed notice of cancellation form; or (2) the date requested by the retiree, surviving spouse, or surviving dependent child on the completed notice of cancellation form received by TRS-Care. The removal of the “fourteen day” retroactive cancellation option will streamline TRS-Care operations without a substantial impact upon participants.

TRS-Care -- §41.12, entitled “Eligibility for the Alternative Plan for Medicare-Eligible Participants”:

In response to recent legislation, TRS will begin offering a new “Alternative Plan” on January 1, 2018. This new TRS-Care rule establishes the eligibility criteria for enrollment in this plan. An individual will be eligible to enroll in the Alternative Plan if: (1) the individual is eligible to enroll in TRS-Care; and (2) the individual is eligible for Medicare and either: (i) does not have reasonable access to a particular provider, as determined by TRS; or (ii) as of January 1, 2018, does not have Medicare Part B coverage and the individual’s ability to obtain Medicare Part B coverage is cost prohibitive, as determined by TRS.

RECOMMENDATION

Staff recommends that the Policy Committee authorize public comment publication of the proposed amendments to existing TRS-Care rules §§ 41.1, 41.5, and 41.7, and public comment publication of the newly proposed TRS-Care rule § 41.12 in the *Texas Register*.

ATTACHMENT 1

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS CHAPTER 41 HEALTH CARE AND INSURANCE PROGRAMS

RULES §41.1. Initial Enrollment Periods for the Health Benefit Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §41.5. Payment of Contributions, §41.7. Effective date of Coverage, and §41.12. Eligibility for the Alternative Plan for Medicare-Eligible Participants.

RULE §41.1

Initial Enrollment Periods for the Health Benefits Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)

(a) The initial enrollment period in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) for eligible Teacher Retirement System of Texas (TRS) retirees who take a service retirement and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of:

(1) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after their effective retirement date; or

(2) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, following the last day of the month in which their election to retire is received by TRS.

(b) The initial enrollment period in TRS-Care for eligible TRS disability retirees expires at the end of the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the date that the disability retirement is approved by the TRS Medical Board.

(c) The initial enrollment period in TRS-Care for an eligible surviving spouse of a deceased retiree and for an eligible surviving dependent child of an eligible deceased retiree expires on the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the retiree died at the end of the later of:

~~(1) the 31st day after the end of the month in which the eligible retiree died; or~~

~~–(2) the 31st day after the date of the notice of eligibility that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.~~

(d) The initial enrollment period in TRS-Care for an eligible surviving spouse of a deceased active member and for an eligible surviving dependent child of a deceased active member expires on the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the active member died., as both are defined by §1575.003, Insurance Code, expires at the end of the later of:

~~–(1) the 31st day after the end of the month in which the active member died; or~~

~~–(2) the 31st day following the date of the notice of opportunity to enroll that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.~~

(e) Notwithstanding the other provisions of this section:

(1) A retiree may enroll a new spouse within 31 days of the date on which the retiree marries;

(2) A retiree or surviving spouse may enroll a child who becomes a dependent as defined by § 1575.003, Insurance Code, within 31 days after the date on which the child becomes a dependent eligible for coverage under TRS-Care; and

(3) A participant shall be entitled to all applicable COBRA rights under the Federal Public Health Service Act.

(f) If a retiree fails to enroll a newly eligible spouse or dependent child or if a surviving spouse fails to enroll a newly eligible dependent child within the time periods set out in subsection (e) of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

RULE §41.5

Payment of Contributions

(a) Retirees, surviving spouses, and surviving dependent children or their representative (collectively, "participants") shall pay monthly contributions as set by the trustee for their and their dependents' participation in TRS-Care.

(b) To be eligible for TRS-Care coverage, a participant must authorize the trustee in writing to deduct the contribution amount from the annuity payment. After such authorization, the trustee may deduct the amount of the contribution from the annuity payment.

(c) If the amount of the contribution is more than the amount of the annuity payment, the participant will be billed directly by TRS or the TRS-Care administrator for the entire contribution amount.

(d) Failure to timely pay the full amount of a required contribution for coverage of a dependent or a surviving dependent child will result in termination of coverage for the dependent or surviving dependent child at the end of the month for which the last contribution was made.

(e) Failure to timely pay the full amount of a required contribution for coverage of a retiree or a surviving spouse ~~enrolled in a TRS-Care 2 plan or a TRS-Care 3 plan~~ will result in termination of coverage ~~in the TRS-Care 2 plan or the TRS-Care 3 plan, as applicable, and enrollment in TRS-Care 1~~ for the retiree or surviving spouse, ~~resulting in a decrease in coverage~~ at the end of the month for which the last contribution was made. ~~The retiree or surviving spouse will not be able to change his or her TRS-Care coverage tier (level of coverage) unless and until the retiree or surviving spouse has an additional enrollment opportunity as set out in §41.2 of this title (relating to Additional Enrollment Opportunities) or some other opportunity under Insurance Code, §1575.161.~~

(f) A disability retiree whose annuity payments are forfeited under §31.36 of this title (Relating to Forfeiture of Disability Retirement Annuity Payments Due to Excess Compensation) shall pay the total monthly cost of coverage, as determined by the trustee, attributable to the participation of that disability retiree and the dependents of that disability retiree during the months for which the disability retiree's annuity payments are forfeited. A disability retiree shall pay the total monthly cost of coverage starting with the calendar month for which the first annuity payment is forfeited. The disability retiree shall continue to pay the total monthly cost of coverage for each month of coverage in which the annuity payment for that month is forfeited in accordance with §31.36 of this title. Nothing in this section shall be construed to prevent TRS from collecting the total monthly cost of coverage for months in which annuities should have been but were not forfeited if TRS determines that a disability retiree knowingly failed to report compensation as required and the failure resulted in payment of annuities by TRS that the disability retiree was not eligible to receive.

(g) Notwithstanding subsections (d) and (e) of this section, a disability retiree whose annuity payments are forfeited under §31.36 of this title who fails to timely pay the full amount of a required contribution for coverage attributable to his participation or that of his dependents, including but not limited to amounts found due and owing pursuant to a TRS determination that a disability retiree knowingly failed to report compensation as required and the failure resulted in payment of annuities by TRS that the disability retiree was not eligible to receive, shall have coverage under TRS-Care for himself and his dependents suspended unless TRS-Care receives full payment of all costs of coverage currently due and owing within thirty-one (31) days after TRS-Care mails written notice to the disability retiree of the current amount due and owing. Under such circumstances, the suspension of coverage will be effective at midnight of the last day of the month in which TRS-Care mailed the above written notice to the disability retiree of the current amount due and owing. During such a suspension, coverage under TRS-Care will cease and the costs of coverage for TRS-Care will no longer accrue.

(h) If TRS resumes payment of an annuity to a disability retiree whose coverage has been suspended as described in subsection (g) of this section, the following shall apply:

(1) Such disability retiree shall pay, no later than the last day of the month in which TRS resumes annuity payments to the disability retiree, all costs of coverage due and owing attributable to the participation of that disability retiree and the dependents of that disability retiree, including past due

amounts for coverage prior to the suspension and the costs of coverage for all months during which the disability retiree's annuity payments are resumed, if any.

(2) Upon payment, reinstatement of TRS-Care coverage shall be effective the first day of the earliest month for which the disability retiree's annuity payments are resumed.

(3) If payment in full of all required contributions then due and owing is not timely received by TRS-Care, then ~~notwithstanding subsections (d) and (e) of this section:~~

(A) TRS-Care coverage for the dependents of that disability retiree shall be terminated effective the last day of the month in which the dependents' coverage was suspended under subsection (g) of this section;

(B) TRS-Care coverage for the disability retiree ~~enrolled in a TRS-Care 2 plan or a TRS-Care 3 plan prior to the suspension, as applicable, shall be will terminated~~ effective the last day of the last month ~~in during~~ which the disability retiree's coverage was suspended under subsection (g) of this section, ~~and the disability retiree will be enrolled in TRS-Care 1, effective the first day of the earliest month for which the disability retiree's annuity payments are resumed following the suspension, resulting in a decrease in coverage; and~~

~~—(C) TRS-Care coverage for the disability retiree enrolled prior to the suspension in TRS-Care 1 will resume effective the first day of the earliest month for which the disability retiree's annuity payments are resumed following the suspension. The disability retiree will not be able to change his TRS-Care coverage tier (level of coverage) or add dependents unless and until the disability retiree has an additional enrollment opportunity as set out in §41.2 of this title or some other opportunity under Insurance Code, §1575.161.~~

RULE §41.7

Effective Date of Coverage

(a) Except as allowed by subsection (c) of this section, for TRS members who take a service or disability retirement and enroll in coverage during their initial enrollment period as described in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)), the effective date of coverage is:

(1) the first day of the month following the effective date of retirement if the application for coverage is received by TRS-Care on or before the effective retirement date; or

(2) the first day of the month following the receipt of the application for coverage by TRS-Care if the application is received after the effective retirement date but within the initial enrollment period.

(b) ~~Subject to §1575.1581, Insurance Code, a~~ TRS member who takes a service or disability retirement and enrolls in coverage during his or her initial enrollment period may, at any time during his or her initial enrollment period, make changes to his or her coverage elections. The effective date of coverage

for the new elections is the first day of the month following receipt by TRS-Care of the application requesting the change in coverage.

(c) Regardless of the date a TRS member submits his application for retirement, if a TRS member enrolls in coverage during his initial enrollment period as described in §41.1 of this title, the TRS member may defer the effective date of coverage described in subsection (a) of this section for himself and his eligible dependents to the first day of any of the three (3) months immediately following the month after the effective date of retirement. This deferment period runs concurrent with, and does not extend, the enrollment period as described in §41.1 of this title. In no event may a TRS member defer the effective date of TRS-Care coverage to a date prior to the date upon which TRS-Care receives the application for coverage from the TRS member.

(d) Surviving spouses and surviving dependent child(ren) who are currently enrolled with the ~~retiree participant~~ at the time of the ~~retiree's participant's~~ death will continue to be enrolled in the same ~~level of coverage and the same~~ coverage plan, subject to the applicable eligibility requirements of that coverage plan.

(e) If the surviving spouse or the surviving dependent child was not enrolled in TRS-Care immediately preceding his or her becoming eligible for coverage, the effective date of coverage will be, at the election of the surviving spouse or the surviving dependent child, either the first day of the month following:

(1) TRS-Care's receipt of an application during the initial enrollment period as described in §41.1 of this title; or

(2) the month of the death of the deceased TRS service or disability retiree or deceased active TRS member, provided TRS-Care receives an application during the initial enrollment period as described in §41.1 of this title.

(f) The effective date of coverage for an eligible dependent who is enrolled under a retiree's or surviving spouse's TRS-Care coverage during the initial enrollment period is the same date as the retiree or surviving spouse's effective date of coverage unless the dependent is enrolled after the retiree's effective retirement date and after the retiree has enrolled but within the initial enrollment period, in which case the dependent's effective date of coverage will be the first day of the month following TRS-Care's receipt of the application to enroll the dependent.

(g) The effective date of coverage for an eligible individual who is enrolled in TRS-Care as a result of a special enrollment event, as described in §41.2 ~~(c)(b)(1)~~ of this ~~title~~ chapter (relating to Additional Enrollment Opportunities), is the date specified under the provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)).

(h) The effective date of coverage for an eligible individual who is enrolled in TRS-Care as a result of the Age 65 enrollment opportunity, as a retiree, a surviving spouse, and an eligible dependent described in §41.2 ~~(b)(a)(2) or (3) of this title who submit an application within the time period described by §41.2(a)(8)~~ of this title is:

(1) the first day of the month following the month of the retiree's or surviving spouse's 65th birthday if the application for coverage is received by TRS-Care ~~on or~~ before or during the month of the retiree's or surviving spouse's 65th birthday; or

(2) the first day of the month following the receipt of the application by TRS-Care if the application for coverage is received after the month of the retiree's or surviving spouse's 65th birthday but within the enrollment period.

(i) Except as provided in subsections (k), (l), and (m), ~~and (n)~~ of this section, the effective date of changes in coverage due to the acquisition of Medicare Part A and/or Medicare Part B is the first of the month following the date of TRS-Care's receipt of proof, satisfactory to TRS-Care, of the participant's or dependent's Medicare Part A and/or Medicare Part B coverage.

~~(j) Except as provided in subsections (l), (m), and (n) of this section, the effective date of reduction in coverage shall be the first day of the month following TRS-Care's receipt of a signed request for reduced coverage.~~

~~(j)(k)~~ A retiree, surviving spouse, or surviving dependent child may cancel any coverage by submitting the appropriate notice of cancellation form ~~notice~~ to TRS-Care. Cancellations will be effective on the later of:

(1) the first day of the month following TRS-Care's receipt of the date printed on the completed notice of cancellation form ~~("notice date") sent to the retiree at the retiree's last known address, as shown in the TRS-Care records, if TRS-Care receives the completed notice of cancellation within fourteen days of the notice date;~~ or

(2) the date requested by the retiree, surviving spouse, or surviving dependent child on the first day of the month following TRS-Care's receipt of the retiree's completed notice of cancellation form received by TRS-Care. ~~if the form is received more than fourteen calendar days after the notice date; or~~

~~(3) the first day of the month following TRS-Care's receipt of a written request to cancel coverage from a surviving spouse or from or on behalf of a surviving dependent child.~~

~~(k)(l)~~ Where a participant has Medicare Part A coverage and TRS-Care has been paying primary to Medicare on Medicare Part A claims, TRS-Care may seek the recovery of funds and may make the effective date of the correct coverage retroactive to the first day of the earliest month for which recovery of such overpaid funds is possible under Medicare rules.

~~(l)(m)~~ Where a participant has Medicare Part A coverage and TRS-Care has been paying primary to Medicare on Medicare Part A claims, TRS-Care may make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and TRS-Care to a maximum retroactive period of twelve months, including the month in which proof, satisfactory to TRS-Care, of Medicare Part A coverage is received by TRS-Care, and based thereon, TRS-Care may refund or credit the amount due to the participant.

~~(m)(n)~~ Upon TRS-Care's discovery that a participant does not have Medicare Part A coverage, in contrast to TRS-Care records indicating the participant has Medicare Part A coverage, TRS-Care will

contact the participant and advise the participant that the cost of coverage and the coverage will be adjusted prospectively effective the first day of the next month unless proof, satisfactory to TRS-Care, of Medicare Part A coverage is received by TRS-Care prior to that date. Claims will be paid based upon the coverage in effect at the time the services were provided. Any claims already paid as if Medicare Part A were in effect will not be adjusted.

RULE §41.12

Eligibility for the Alternative Plan
for Medicare-Eligible Participants

An individual is eligible to enroll in the Alternative Plan offered under TRS-Care if:

1. the individual is eligible to enroll in TRS-Care; and
2. the individual is eligible for Medicare and either:
(A) does not have reasonable access to a particular provider, as determined by TRS; or
(B) as of January 1, 2018, does not have Medicare Part B coverage and the individual's ability to obtain Medicare Part B coverage is cost prohibitive, as determined by TRS.

TAB 6



Legal & Compliance

Memorandum

DATE: September 1, 2017

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Proposed new rule: § 23.9, Communicating Information Electronically

BACKGROUND INFORMATION

Staff requested Brian Guthrie to authorize publication for public comment of proposed new rule § 23.9, relating to communicating information electronically. The proposed rule implements the authority provided in SB 1663 which was recently passed by the 85th Legislature to communicate certain information to a member or retiree electronically. The bill takes effect on September 1, 2017. The proposed new rule had to be published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider its adoption. Because there was not sufficient time for the Policy Committee to authorize publication before the Board of Trustees considers the proposed new rule for adoption in September, staff requested Brian Guthrie to authorize the publication of the proposed new rule under the authority of Article 5, § 5.7 of the Bylaws of the Board of Trustees so that the policy committee and board may consider its adoption at the September 2017 board meeting.

The proposed new rule will have been published for public comment in the *Texas Register* for at least 30 days before the committee and board consider its adoption. The proposed new rule was published on August 18, 2017 at 42 TexReg 4091. To date TRS has not received any written comments regarding the proposed new rule. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the September meeting.

SUMMARY OF PROPOSED NEW RULE

TRS is currently required to provide participants with certain information, including a summary of benefits available from TRS, eligibility for the benefits, how to claim or choose the benefits, and a

summary of any significant changes made to the plan's terms. TRS is also required to annually provide each active member with a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits are based and an annual statement to each annuitant of the amount of payments made to the annuitant by TRS in the preceding 12 months. TRS complies with the requirements by mailing a copy of the Benefits Handbook to new members and making subsequent versions of the handbook and other benefit related information such as brochures and newsletters available on the TRS website and by mailing a copy of the TRS Newsletter that contains notice of significant changes to the plan's terms to all members and retirees.

SB 1663 clarified that TRS may provide information related to the plan's terms to an e-mail address provided to TRS by the participant's employer. The bill also provides TRS with the authority to send confidential participant information to an email address provided by the participant.

The proposed new rule clarifies that TRS may distribute non-confidential information required by law to be provided to participants of the plan and any other non-confidential information determined by TRS to be beneficial for distribution by sending the information to a work email address for the member or retiree provided by the employer. Under the terms of the proposed rule, confidential information related to a specific member or retiree may be provided electronically to an email provided by the member, retiree, or authorized requestor or to the member's or retiree's TRS web self-service account provided the information is encrypted or TRS has otherwise taken reasonable steps to protect the confidential information from unauthorized disclosure.

RULE §23.9. Communicating Information Electronically.

The Teacher Retirement System of Texas (TRS) may provide a summary of the benefits administered by TRS, the procedures for claiming the benefits, notice of and information related to changes in the benefits or programs administered by TRS, and any other non-confidential information required by §802.106, Government Code, or determined by TRS to be beneficial for distribution by sending the information to a work email address provided by the member's or retiree's employer or by directing the member or retiree through a work email provided by that individual's employer to an internet website to access non-confidential information. Confidential information related to a specific member or retiree may be provided by TRS electronically to the email address provided by the member, retiree, or authorized requestor or to the member's or retiree's TRS web self-service account, provided the confidential information is encrypted or TRS has otherwise taken reasonable steps to protect the confidential information from unauthorized disclosure.



Legal & Compliance

Memorandum

DATE: September 1, 2017

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Proposed amendments to § 25.10, relating to Student Employment and § 25.28 relating to Payroll Report Dates and authorization to publish proposed new rules § 25.173, relating to Correction of Ineligible Participation in TRS and § 25.191, relating to Time Period at Retirement to Complete Purchase of Service Credit

BACKGROUND INFORMATION

Staff requested Brian Guthrie to authorize publication for public comment of proposed amendments to § 25.10, relating to Student Employment and § 25.28 relating to Payroll Report Dates and proposed new rules § 25.173, relating to Correction of Ineligible Participation in TRS and § 25.191, relating to Time Period at Retirement to Complete Purchase of Service Credit.

The proposed amendments to § 25.10, relating to Student Employment, incorporate the legislative change in SB 1663 that makes student employment not eligible for membership in TRS and the proposed amendments to § 25.28, relating to Payroll Report Dates, address the changes to § 825.408, Government Code, that require employers to make monthly reports to TRS and to submit member and employer contributions by a stated timeline. The proposed new rule § 25.173, relating to Correction of Ineligible Participation in TRS addresses how TRS will administer the correction procedures provided in SB 1954 for persons eligible to participate in ORP. Proposed new rule § 25.191, relating to Time Period at Retirement to Complete Purchase of Service Credit, incorporates the time periods adopted in SB 1664 to complete the purchase of service credit at retirement. The legislation takes effect on September 1, 2017. The proposed amendments to the two rules and the two proposed new rules had to be published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider their adoption. Because there is not sufficient time for the Policy Committee to authorize

publication before the Board of Trustees will consider the proposed amendments to existing rules and the proposed new rules for adoption in September, staff requested Brian Guthrie to authorize the publication of the proposed amendments to existing rules and the proposed new rules under the authority of Article 5, § 5.7 of the Bylaws of the Board of Trustees so that the policy committee and board may consider the adoption of these changes at the September 2017 board meeting.

The proposed amendments and proposed new rules will have been published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider their adoption. The proposed amendments and proposed new rules were published on August 18, 2017 at 42 TexReg 4093-4096. To date TRS has not received any written comments regarding the proposed amendments and the proposed new rules. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the September meeting.

SUMMARY OF PROPOSED AMENDMENTS AND NEW RULES

§ 25.10, relating to Student Employment

Currently, student employment, i.e., employment by a Texas public college or university that is conditioned upon enrollment as a student, is not eligible for membership in TRS unless the person has other eligible employment during the same payroll period. The compensation for the student employment is creditable compensation for TRS purposes. SB 1663 provides that a person who is a student employee is not permitted to be a member of TRS based on that student employment and that compensation paid for student employment is not subject to member contributions and report to TRS and may not be used in benefit computations. This means that even if the person has other membership eligible employment, the compensation cannot be reported to TRS and will not be used in benefit calculations. The proposed amendments to this rule align the TRS rule with the revised statute.

§ 25.28 relating to Payroll Report Dates

The proposed changes to this rule address the changes in SB 1663 that establish different due dates for an employer to file the monthly payroll report and the monthly certified statement with information about the retirees it employs and TRS' authority to charge a late fee when employers fail to complete the required reports by the established due dates. Currently, all monthly reports are due before the seventh day of the following month. SB 1663 establishes a later due date for the monthly certified statement for the employment of retirees. The monthly certified statement for the employment of retirees is due before the eleventh day of the following month, except that the certified statement for August will continue to be due before the seventh of September to facilitate the year-end closing of employer reports. The proposed changes to this rule conform the rule to the new statutory due dates for submitting completed reports. In addition, SB 1663 requires that employers that fail to timely submit reports must pay a late fee for each day that the reports are not filed. The late fee is in addition to penalty interest TRS is currently authorized to charge for depositing member and employer contributions after the required due date. The proposed rule amendments implement the late fee requirement effective with the January 2018 reports which are due in February 2018 and provide the late fee structure as follows:

Number of eligible employees	Late fee for first day	Late fee for each subsequent day
1-99	\$100	\$10
100-499	\$250	\$25
500-1,000	\$500	\$50
Over 1,000	\$1,000	\$100

The proposed amendments also provide that the number of eligible employees used to determine the late fee amount is determined based on the number of eligible employees reported by that employer in May of the preceding year. New employers will be assigned to the smallest employer group until the following year when the number of eligible employees reported in May will be used to establish the appropriate employer group.

§ 25.173, relating to Correction of Ineligible Participation in TRS

The proposed new rule implements the requirements of SB 1954 that establish how to correct the error of reporting a person to TRS who is not eligible for participation in TRS. The error addressed in the bill is one that is based on a prior election to participate in the Optional Retirement Program (ORP) in lieu of participation in TRS by a person who then vested in participation in ORP by participating for at least one year in that program. The proposed new rule confirms the statutory requirement that the person must be restored to ORP immediately and describes how member and employer contributions held by TRS are directed. Requirements in the new rule include the requirement that the employer and ORP trustee complete required certifications that confirm the amount of compensation paid to the person and contributions that should have been made to ORP and allow TRS to make a direct trustee-to-trustee transfer of member contributions that should have been made to the ORP plan account plus earnings of 4 percent. After certification and approval by TRS, the employer is authorized by the rule to take a credit against future contributions owed to TRS for amounts the employer contributed to TRS in lieu of state contributions based on the person’s employment, but earnings on the employer contributions may not be taken as a credit by the employer. The rule also addresses how member contributions that are in excess of the amount of ORP participant contributions will be paid directly to the member along with any amounts paid to TRS to purchase service credit when the person was not eligible for membership in TRS. No earnings are authorized on excess contributions and amounts paid to purchase service credit.

§ 25.191, relating to Time Period at Retirement to Complete Purchase of Service Credit

SB 1664 confirmed TRS’ authority to allow additional time at retirement for a member to complete the purchase of service credit. The bill provides a member with two months to complete the purchase of service credit other than the purchase of service credit for accumulated state sick or personal leave. Members purchasing service credit for accumulated state sick or personal leave credit were given 90 days to complete the purchase because this type of service credit may only be purchased at retirement. An additional 30 day extension is also authorized by the bill for those members purchasing service credit for accumulated state sick or personal leave by rollover. The proposed new rule clarifies that if the service credit being purchased is required in order to establish eligibility for retirement, the purchase must be completed by the effective date of retirement. It also confirms that the purchase must be completed before the first annuity payment is made and if the purchase cannot be completed within the timeframe provided, the member may either decline to purchase the service credit and keep the original

effective date of retirement or establish a new effective date of retirement that will allow sufficient time for the retiree to complete the purchase of the service credit.

§25.10. Student Employment.

(a) Effective with the beginning of the 2017-18 school year, a [A] person employed in a Texas public college or university is not eligible for membership, service credit, or compensation credit based on employment that is conditioned upon enrollment as a student and compensation paid to the person for work performed as a student employee is not compensation subject to report and deduction for member contributions. For school years prior to the 2017-18 school year, a person employed in a Texas public college or university is not eligible for membership if that employment is conditioned upon enrollment as a student and the person has no other eligible employment during the same payroll period. No person may establish or reinstate credit for previously reported student employment.

(b) A person who accepts employment conditioned upon enrollment as a student does not lose any rights from service established as a member when student enrollment was or is not an issue.

§25.28. Payroll Report Dates.

(a) Except as provided under §31.2 of Chapter 31, Subchapter A, Part 3 of this Title, payroll reports and all member and employer deposits for a report month are due before the seventh day after the last day of the month. If the sixth day of the month falls on a weekend or federal holiday, the payroll reports and all member and employer deposits are due on the last business day before the sixth day of the month. The executive director shall establish [~~dates on which payroll reports are due and~~] the form and method to be used in reporting information regarding compensation and employment and such member and employer deposits as are due to the Teacher Retirement System of Texas (TRS). School officials shall be notified of such regulations. Each employer that fails to remit all required member and employer contributions to TRS before the seventh day after the last day of the month shall pay to TRS penalty interest on the unpaid amounts in the amount provided in Section 825.408, Government Code. Effective with the employer reports due for the report month of January 2018, each employer that fails to attain a completed status on all required reports or fails to submit all documentation required by TRS before the seventh day after the last day of the month shall pay, in addition to any deposits and penalty interest owed, the late fee established in subsection (j) of this section for each business day that the report fails to attain a completed status.

(b) Each employer must report each month in a form prescribed by TRS information on the total amount of salary paid to employees eligible to participate in TRS from federal funds and/or private grants. Reporting districts must transmit to TRS the current state contribution rate of

the monies paid as salary for those employees covered by TRS in addition to the amount transmitted for member contributions. If the maximum percentage legally provided for retirement purposes from the funds is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(c) Effective September 1, 2015, each employer must report each calendar month in a form prescribed by TRS, information regarding the persons it employs, the positions held, the time worked and the compensation paid, including the number of days and/or hours worked and the amount and type of salary paid to employees during that calendar month, including salary paid from federal funds and/or private grants. Employers must transmit to TRS the current state contribution rate of the monies paid as salary from federal funds and/or private grants for those employees covered by TRS in addition to the amount transmitted for member contributions and contributions required by §§825.405, 825.4034 and 825.4071, Government Code. If the maximum percentage legally provided for retirement purposes from the federal funds and/or private grants is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(d) Employees who have a qualified contract or an oral or written work agreement shall have information about the contract reported by each school district in a form prescribed by TRS.

(1) A qualified contract is an employment agreement which meets the following criteria.

(A) Service under the agreement must begin on or after July 1, but not later than August 31, of the same calendar year.

(B) Service contemplated by the agreement must be for a definite period extending past August 31 of the same calendar year in which service under the agreement began, as evidenced by an enforceable legal obligation on the part of the employer to employ and to compensate the employee for such period.

(C) Employees who can be terminated by the employer without the employer being obligated to pay a fixed amount stated in a contract are not included in the report.

(2) Reports on contracts and oral or written work agreements with a beginning date in July should be submitted to TRS in the July report. Reports on contracts and oral or written work agreements with a beginning date in August should be filed with the August or September report.

(e) Any employer may ask the retirement system for a written statement on whether a particular form of compensation is salary and wages subject to member deposits under the law and rules governing the system. A request for such a statement should be submitted in writing to the retirement system together with any contracts, board minutes, briefs, memoranda, or other material relevant to the request.

(f) An employer paying amounts to a member pursuant to a settlement agreement must obtain a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes and will not be included in determining the amount of benefits payable by TRS. The requirement in this subsection to obtain a written determination from TRS before reporting amounts to TRS that are paid pursuant to a settlement agreement does not apply to normal amounts of compensation paid to the employee while the employee is on paid leave of any type, including paid administrative or emergency leave, pursuant to a settlement agreement.

(g) If due to a technological error, an employer does not report all service rendered and/or salary paid as required in subsection [\(a\)](#)~~(b)~~ of this section and the error regards service rendered and/or salary paid in the immediately preceding school year, the error may be corrected if the following requirements are met:

(1) the person for whom contributions were due is currently employed by the employer and compensation for the current year remains due to the employee;

(2) the employer requests a waiver of the reporting requirements under §825.408 (a), Government Code and the request is granted by TRS;

(3) the employer submits member contributions on the unreported amounts pursuant to §825.409, Government Code, from any remaining compensation due and any employer contributions due on the compensation are paid by the employer;

(4) the employer pays the interest required by §825.408, Government Code and corrects the records for the report months in which the compensation was paid as directed by TRS; and

(5) the error is corrected by the end of the school year following the school year in which the service was rendered and/or the compensation was paid. Upon receipt of the member and employer contributions and the corrected report(s), the service credit and/or compensation credit will be credited to the member. In no event may service or compensation credit be granted under this subsection for service rendered or compensation received in a school year prior to the immediately preceding school year.

(h) An employer must report each calendar month only compensation paid in that calendar month in accordance with normal pay periods for all employees. In no event may an employer include salary paid in a prior month or may an employer delay payment of salary that should have been paid in a prior month for the purpose of increasing the employee's annual compensation for benefit calculation purposes. If compensation should have been paid in a prior month but due to a technological or accounting error, the compensation was not reported in the report month that it was paid and the error occurred in the current school year, or if the employer is required by law to correct an error in payment that occurred during the current school year, the monthly report shall be adjusted in the manner prescribed by TRS.

(i) An employer may not pay an employee less than the amount owed in a calendar month for the purpose of extending the employee on payroll in order to receive a year of service credit or to establish eligibility for participation in health care benefits as provided in Chapter 1579, Insurance Code, Title 8, Subtitle H.

(j) Effective with the employer reports due for the report month of January 2018, employers that fail to remit all required reports and documentation or fail to attain a completed status for the report(s) as required in this section shall pay to TRS, in addition to the required deposits and any applicable penalty interest on unpaid amounts, the late fee established in this subsection for each business day that the report fails to attain a completed status. The late fees required to be paid are as follows:

(1) For employers with fewer than 100 employees eligible for membership in TRS, the late fee for the first business day after the due date that the report fails to attain a completed status is \$100. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$10.

(2) For employers with at least 100 employees eligible for membership in TRS but fewer than 500 eligible employees, the late fee for the first business day after the due date that the report fails to attain a completed status is \$250. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$25.

(3) For employers with at least 500 employees eligible for membership in TRS but no more than 1,000 eligible employees, the late fee for the first business day after the due date that the report fails to attain a completed status is \$500. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$50.

(4) For employers with more than 1,000 employees eligible for membership in TRS, the late fee for the first business day after the due date that the report fails to attain a completed status is \$1,000. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$100.

(k) In determining the number of employees eligible for membership in TRS for purposes of assessing the late fees in subsection (j) of this section, TRS shall base the amount of the late fee on the number of eligible employees reflected on the employer's report for May of the preceding school year. New employers will pay late fees for the first school year as provided in subsection (j)(1) of this section.

§25.173. Correction of Ineligible Participation in TRS.

(a) Except as provided in subsection (e) of this section, a person who elected to participate in ORP and participated in ORP for at least one year and who was reported to TRS in error as described in §830.108, Government Code, must be restored to participation in ORP and may not receive a distribution of benefits from TRS based on the ineligible participation.

(b) Each employer that reported the person in error to TRS must, within 30 calendar days of receiving the request from TRS, certify on a form prescribed by TRS that the person was reported in error to TRS; the amount of the person's compensation that was creditable for ORP purposes and the amount of participant contributions that should have been contributed to ORP for each school year that the person was employed by that employer and reported in error to TRS; and the amount, if any, of employer contributions made to TRS under §§ 825.4041, 825.406, 825.407, or 825.4071, Government Code, based on the employment of the person reported to TRS in error.

(c) The person reported to TRS in error must provide information required by TRS to make a direct trustee-to-trustee transfer to the trustee of the person's ORP plan account of authorized amounts and complete any forms prescribed and required by TRS to make the direct trustee-to-trustee transfer of funds, including the agreement of the trustee of the person's ORP plan account to accept the transfer in accordance with §830.108(d)(2)(B), Government Code. The trustee must also agree to separately account for any after-tax funds that are part of the direct trustee-to-trustee transfer. Authorized amounts include the amount of participant contributions that should have been made to ORP plus an amount representing earnings authorized by §830.108. If the amount of ineligible member contributions received by TRS is less than the amount of participant contributions that should have been made to ORP, then TRS may only make a direct trustee-to-trustee transfer of an amount equal to the amount of ineligible TRS member contributions plus authorized earnings. TRS may not pay or transfer any amount of required ORP participant contributions that exceed the amount of ineligible member contributions received by TRS.

(d) Each employer that reported the person in error to TRS and that made employer contributions in error to TRS under §§ 825.4041, 825.406, 825.407, or 825.4071, Government Code, must provide the certification required in subsection (b) and receive the approval of TRS before taking a credit for the employer contributions through the TRS employer reporting system. Earnings on the employer contributions paid in error to TRS are not authorized for payment by TRS and may not be taken as a credit through the employer reporting system.

(e) If within 180 days of notice by TRS of the reporting error, the person does not have or cannot establish an ORP account; cannot obtain the required certification from the employer(s) that reported the person in error to TRS; cannot obtain the approval of the trustee of the person's ORP plan account to receive the direct trustee-to-trustee transfer of funds from TRS; or does not provide the forms required for TRS to make the direct trustee-to-trustee transfer of funds to the person's ORP plan account, TRS is authorized to pay directly to the person

reported in error to TRS the ineligible TRS member contributions equal to the amount of ORP member contributions received by TRS that should have been contributed to ORP plus the amount representing earnings on amounts authorized by §830.108.

(f) TRS must make a direct payment to the person of the amount of ineligible TRS member contributions deposited in error with TRS that exceed the amount of ORP participant contributions that should have been paid to the person's ORP account and any amounts paid by the person to purchase TRS service credit while ineligible to participate in TRS. The amount of direct payment to the person reported in error to TRS under this subsection does not include earnings that are authorized on amounts transferred to the person's ORP account by §830.108 or paid directly to the person pursuant to subsection (e).

(g) An employer of a person who elected ORP but was reported in error to TRS may not take a credit through the TRS employer reporting system of any member or employer contributions authorized in §830.108(c)(2) without the knowledge and express approval of TRS.

§25.191. Time Period at Retirement to Complete Purchase of Service Credit.

(a) Payment for service credit other than service credit for accumulated state personal or sick leave must be received not later than two calendar months after the later of the member's effective retirement date or the last day of the month in which the member submits a retirement application and before the later of the due date for the member's first monthly annuity payment or the date on which the Teacher Retirement System of Texas (TRS) issues the first monthly annuity payment to the member. If the service credit other than service credit for accumulated state personal or sick leave must be purchased in order to establish eligibility to retire, the purchase must be completed by the effective date of retirement. If the purchase of the service credit other than service credit for accumulated state personal or sick leave cannot be completed within the time period provided in this section, the member may decline to purchase the service credit and maintain the member's effective retirement date or may revoke the member's effective retirement date and select a later effective retirement date that provides sufficient time to complete the purchase of the service credit.

(b) Payment for accumulated state personal or sick leave service credit must be received by TRS not later than the 90th day after the date TRS issues a cost statement for the purchase of the service credit. If the purchase is being made by a rollover distribution from another eligible retirement plan or a direct trustee-to-trustee transfer of funds from an eligible plan as

described in §823.403(d), Government Code, TRS may grant the member a one-time 30 day extension to complete the purchase. If the member cannot complete the purchase within the time period provided, the member may decline to purchase the accumulated state personal or sick leave service credit and maintain the member's effective retirement date or may revoke the member's effective retirement date and select a later effective retirement date that provides sufficient time to complete the purchase. Accumulated state personal or sick leave credit may not be purchased in order to establish eligibility for retirement benefits.



Legal & Compliance

Memorandum

DATE: September 1, 2017

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Authorization to publish proposed new rules § 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense and § 29.91, relating to Restoring Forfeited Benefits After Conviction Is Overturned

BACKGROUND INFORMATION

Staff asks the Policy Committee to authorize publication of two new rules in Chapter 29, relating to Benefits. Specifically, staff proposes new rules § 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense and § 29.91, relating to Restoring Forfeited Benefits After Conviction is Overturned. The proposed new rules would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption at the December 2017 meeting.

Proposed new rule § 29.90 addresses Senate Bill 7 which requires that if a defendant who is or was an employee of a public primary or secondary school is convicted of a qualifying felony of which the victim is a student, the defendant forfeits the right to receive any service retirement benefits payable by TRS. Proposed new rule § 29.91 addresses a requirement in the same bill providing that benefits must be restored to the defendant when the conviction is overturned on appeal or the defendant meets the requirements for innocence under § 103.001(a)(2), Civil Practices and Remedies Code. The requirements of the bill take effect on the effective date of the rules adopted by the Board of Trustees. Senate Bill 7 requires the Board of Trustees to adopt rules necessary to implement the new section of the law, § 824.009, Government Code, no later than December 31, 2017.

SUMMARY OF NEW RULES**§ 29.90, relating to Forfeiture of Certain Benefits Due to Criminal Offense**

Senate Bill 7 was passed during the regular session of the 85th Legislature and added § 824.009, Government Code, to the TRS plan terms. The new statute addresses when a person who is a member or retiree of TRS forfeits the right to receive service retirement benefits by being convicted of a felony under § 21.02, Penal Code, relating to continuous sexual abuse of young child or children; § 21.12, Penal Code, relating to improper relationship between educator and student; § 22.011, Penal Code, relating to sexual assault; or § 22.021, Penal Code, relating to aggravated sexual assault, of which a student is the victim and the crime occurred while the defendant was employed by a TRS-covered employer. The proposed new rule details how TRS will comply with the new statute.

The proposed new rule requires that upon receipt of notice of judgment from a state or federal district court, a district attorney or U.S. Attorney, or the defendant's employer that includes the information required for TRS to determine that the defendant's benefits are forfeited under § 824.009, TRS will either terminate the distribution of monthly service retirement benefits to the defendant if the defendant has retired or refund the balance of accumulated contributions in the member account to the defendant if he/she has not retired. Because the statute requires that benefits payable to an alternate payee under certain domestic relations orders are not affected by the defendant's ineligibility to receive a retirement annuity, the proposed new rule addresses how TRS will ensure that the alternate payee receives the benefits due under the qualified domestic relations order (QDRO).

The proposed new rule attempts to acknowledge the fine line between designing the terms of the plan which is the purview of the Legislature and administering the terms of the plan which is the responsibility of TRS, when the language of the bill did not fully delineate how TRS was to implement each situation arising under the bill. It may be helpful to request clarification of certain parts of the bill in future legislative sessions.

§ 29.91, relating to Restoring Forfeited Benefits After Conviction is Overturned

This proposed new rule addresses how benefits will be restored to a person whose conviction identified in § 29.90 is overturned or who meets the requirements for innocence under § 103.001(a)(2), Civil Practices and Remedies Code. The new rule addresses how annuity payments that were forfeited will be restored to the member and the amount of the benefit if the annuities were divided based on the terms of a qualifying QDRO. It also distinguishes between annuities that were forfeited in the past and annuities that are due in the future. Annuities that were forfeited in the past must immediately be paid to the person along with interest, while annuities that are due in the future may be paid only upon repayment by the person of the accumulated contributions distributed on his/her behalf under § 29.90. The proposed new rule also addresses what benefits will be paid to certain alternate payees. Because Senate Bill 7 specifically addresses QDRO's in place before September 1, 2017 and QDRO's entered pursuant to § 824.009, but does not address QDRO's entered after September 1 2017 but not pursuant to § 824.009, there is a difference in how payments to alternate payees under the different QDRO's are affected.



Legal & Compliance

Memorandum

DATE: September 1, 2017

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Proposed amendments to § 31.2, relating to Monthly Certified Statement; § 31.11, relating to Employment Resulting in Forfeiture of Service Retirement Annuity; § 31.12, relating to Exceptions to Forfeiture of Service Retirement Annuity; § 31.13, relating to Substitute Service; § 31.14, relating to One-half Time Employment; § 31.15, relating to Full-time Employment after 12 Consecutive Month Break in Service; § 31.31, relating to Employment Resulting in Forfeiture of Disability Retirement Annuity; § 31.32, relating to Half-time Employment Up to 90 Days; § 31.33, relating to Substitute Service Up to 90 Days; § 31.34, relating to Employment Up to Three Months on a One-Time Only Trial Basis; and § 31.41, relating to Return to Work Employer Pension Surcharge

BACKGROUND INFORMATION

Staff requested Brian Guthrie to authorize publication for public comment of proposed amendments to § 31.2, relating to Monthly Certified Statement; § 31.11, relating to Employment Resulting in Forfeiture of Service Retirement Annuity; § 31.12, relating to Exceptions to Forfeiture of Service Retirement Annuity; § 31.13, relating to Substitute Service; § 31.14, relating to One-half Time Employment; § 31.15, relating to Full-time Employment after 12 Consecutive Month Break in Service; § 31.31, relating to Employment Resulting in Forfeiture of Disability Retirement Annuity; § 31.32, relating to Half-time Employment Up to 90 Days; § 31.33, relating to Substitute Service Up to 90 Days; § 31.34, relating to Employment Up to Three Months on a One-Time Only Trial Basis; and § 31.41, relating to Return to Work Employer Pension Surcharge.

The proposed amendments to these rules implement the legislative changes in SB 1663 regarding employment after retirement. The changes address the timeline for employers to file the monthly certified statement for the employment of retirees and the change to what types of employment relationships between TRS-covered employers and retirees are considered employment that is subject to the limits on employment after retirement and that interrupts the required 12 full, consecutive calendar month break in service before full-time employment. The changes apply to the rules for both service and disability retirees. In addition to the proposed amendments due to changes in SB 1663, staff is also proposing amendments to applicable rules that clarify how TRS applies the limit on the number of days that a service or disability retiree may work when combining work as a substitute and any other work for a TRS-covered employer in the same calendar month. Proposed changes to § 31.33(d) are corrective changes that are recommended to improve consistency in the rules for disability and service retirees regarding how TRS administers the limits on employment after retirement when a disability retiree combines work as a substitute and any other work for a TRS-covered employer in the same calendar month.

The changes in SB 1663 take effect on September 1, 2017. The proposed amendments to the eleven rules in Chapter 31 had to be published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider its adoption. Because there was not sufficient time for the Policy Committee to authorize publication before the Board of Trustees will consider the proposed amendments to existing rules for adoption in September, staff requested Brian Guthrie to authorize the publication of the proposed amendments under the authority of Article 5, § 5.7 of the Bylaws of the Board of Trustees so that the policy committee and board may consider adoption of these changes at the September 2017 board meeting.

The proposed amendments will have been published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider their adoption. The proposed amendments were published on August 18, 2017 at 42 TexReg 4100-4104. To date TRS has not received any written comments regarding the proposed amendments. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the September meeting.

BACKGROUND OF THE REQUESTED ACTION

§ 31.2, relating to Monthly Certified Statement

The proposed changes to this rule reflect the new timeline for employers to file the monthly certified statement of the employment of retirees. SB 1663 extended the time for filing this report from before the seventh day of the following calendar month to before the eleventh day of the following calendar month. This deadline is for all calendar months except August. The deadline for filing the monthly certified statement of the employment of retirees for August was maintained by the bill at the current due date: before the seventh day of the following month. The earlier due date for the August report is required in order for TRS to accomplish year-end closing in a timely manner. In addition, the proposed amendments confirm TRS' long standing application of the deadline by specifically stating that if the deadline falls on a weekend or federal holiday, the reports and surcharges are due on the last business day before the deadline.

Changes proposed to this rule by staff also address additional employment relationships with retirees that are considered employment for purposes of the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree’s effective date of retirement.

The proposed amendments also address the “types” of employment of a retiree that are required to be reported by the employers. In subsection (b) of the rule, staff recommends deleting the reference to the employment of retirees who retired before January 1, 2011 as the new reporting system will be able to track the effective date of retirement for each retiree and adding the category of combining substitute and other work as that type of employment will be required to be reported in the new reporting system.

In addition to these proposed amendments, staff also recommends adding language to this rule that indicates how TRS will administer the requirement that TRS-covered employers pay a late fee when failing to meet the statutory deadline for filing monthly reports. Staff is recommending using the reference to “failing to attain a completed status” with regard to the filing of a monthly certified statement rather than “failing to file” a statement to comport with the terminology used in the reporting system indicating a successful and completed filing of the required information. The late fee structure is addressed in the new subsection (d) of this rule and is consistent with the late fee structure proposed for adoption in § 25.28. Staff recommends delaying the implementation of the late fees until the report for January 2018 which is due in February 2018 to allow sufficient time for addressing any problems that may occur with the implementation of the new reporting system. The proposed late fees structure is as follows:

Number of eligible employees	Late fee for first day	Late fee for each subsequent day
1-99	\$100	\$10
100-499	\$250	\$25
500-1,000	\$500	\$50
Over 1,000	\$1,000	\$100

The proposed amendments also provide that the number of eligible employees used to determine the late fee amount is determined based on the number of eligible employees reported by that employer in May of the preceding year. New employers will be assigned to the smallest employer group until the following year when the number of eligible employees reported in May will be used to establish the appropriate employer group.

§ 31.11, relating to Employment Resulting in Forfeiture of Service Retirement Annuity

The proposed changes to this rule address the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§ 31.12, relating to Exceptions to Forfeiture of Service Retirement Annuity

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§ 31.13, relating to Substitute Service

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement during the first 12 full, consecutive calendar months following retirement and when combined with substitute employment in the same calendar month, must be included in the number of days that a retiree is allowed to work when combining substitute and other employment in the same calendar month. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes proposed by staff clarify that when calculating the number of days a retiree may combine substitute and other work in the same calendar month, the total allowed is one-half the

number of workdays. The proposed changes provide that a work day is each Monday through Friday in the calendar month. The proposed changes also clarify that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

§ 31.14, relating to One-half Time Employment

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes proposed by staff clarify that when calculating the number of days a retiree may combine substitute and other work in the same calendar month, the total allowed is one-half the number of workdays. The proposed changes provide that a work day is each Monday through Friday in the calendar month. The proposed changes also clarify that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

§ 31.15, relating to Full-time Employment after 12 Consecutive Month Break in Service

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

The changes proposed by staff clarify that working in one of these types of relationships is considered employment that interrupts the required 12 full, consecutive calendar month break in service required before working full-time without loss of annuities.

§ 31.31, relating to Employment Resulting in Forfeiture of Disability Retirement Annuity

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees. These types of employment relationships must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§ 31.32, relating to Half-time Employment Up to 90 Days

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees. These types of employment relationships must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes proposed by staff clarify that when calculating the number of days a disability retiree may combine substitute and other work in the same calendar month, the total allowed is one-half the number of workdays. The proposed changes provide that a work day is each Monday through Friday in the calendar month. The proposed changes also clarify that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

§ 31.33, relating to Substitute Service Up to 90 Days

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees. These types of employment relationships must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. The additional employment relationships include

performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes recommended by staff incorporate language in other rules regarding how the limits on employment after retirement apply to a disability retiree when combining substitute employment with other work. These changes are consistent with current application of the limits by TRS but have not been specifically addressed in this rule. The proposed changes add the additional language recommended by staff in other employment after retirement rules regarding how to calculate the number the number of days a disability retiree may work in a calendar month when combining substitute and other work in the same calendar month: the total allowed is one-half the number of workdays. The proposed changes also provide that a work day is each Monday through Friday in the calendar month and clarify that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

§ 31.34, relating to Employment Up to Three Months on a One-Time Only Trial Basis

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. These types of employment relationships are considered employment during the three month trial work period that disability retirees may elect on a one-time basis if the three month trial work period occurs within the first 12 full, consecutive calendar months following the effective date of the disability retirement. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§ 31.41, relating to Return to Work Employer Pension Surcharges

The proposed changes to this rule incorporate the changes in SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The proposed changes clarify that if work in these types of relationships causes a retiree to exceed the limits on employment after retirement during the first 12 full, consecutive months following the retiree's effective date of retirement, surcharges are owed by the employer. The additional employment

relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§31.2. Monthly Certified Statement.

(a) For purposes of administering Government Code, §824.601, a reporting entity shall furnish the Teacher Retirement System of Texas (TRS) a monthly certified statement of all employment of TRS service or disability retirees Except for the monthly certified statement for August of each year, the monthly certified statement and all required employer surcharges must be remitted to TRS before the eleventh day after the last day of the month. The monthly certified statement for August must be remitted before the seventh day of September. If the tenth day of the month, or the sixth day of month for the August monthly certified statement, falls on a weekend or federal holiday, the monthly certified statement and all required employer surcharges are due on the last business day before the due date. Each employer that fails to remit all required employer surcharges to TRS before the eleventh day after the last day of the month or before the seventh day of September for the monthly certified statement for August, shall pay to TRS penalty interest on the unpaid amounts in the amount provided in §825.408, Government Code. Effective with the monthly certified statement due for the report month of January 2018, each employer that fails to attain a completed status on all monthly certified statements required by TRS before the eleventh day after the last day of the month or before the seventh day of September for the monthly certified statement for August shall pay, in addition to any deposits and penalty interest owed, the late fee established in subsection (d) of this section for each business day that the monthly certified statement fails to attain a completed status. In addition to the monthly certified statement of the employment of all TRS service or disability retirees, reporting entities must include the following:

(1) effective[Effective] June 20, 2003, [the certified statement must include] information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity that employees of the reporting entity would otherwise perform or provide; and

(2) effective the beginning of the 2017-18 school year, information regarding retirees who retired within 12 full, consecutive calendar months of the month of the monthly certified statement and are performing duties or providing services for or on behalf of the reporting entity that employees of the reporting entity would otherwise perform or provide, and are:

(A) waiving, deferring, or forgoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(b) The monthly certified statement shall contain information required by TRS to administer applicable limitations and necessary for the executive director or his designee to classify employment as one of the following:

(1) substitute service;

(2) employment that is not more than one-half time;

(3) full-time employment;

(4) trial employment of disability retiree for three months; or

~~[(5)-combination of substitute and other work in the same calendar month]-employment of a service retiree who retired before January 1, 2011-.~~

~~(c)[(b)]~~ For purposes of administering Government Code, §825.4092 and Insurance Code, §1575.204, a reporting entity shall furnish TRS a monthly certified statement reflecting the ~~[number of]~~ TRS service and/or disability retirees working ~~[in positions eligible for TRS membership]~~, the ~~[total]~~ amount of salary paid to each retiree ~~[retirees who are not exempt from the payments due under §31.41 of this title (relating to Return To Work employer Pension Surcharge)]~~ the total amount paid on all retirees under §31.41 of this title, the total amount due under §41.4 of this title (relating to Employer Health Benefit Surcharge), and any other information requested by TRS for the administration of these sections. The monthly certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, ~~[are working in positions eligible for TRS membership,]~~ and are performing duties or providing service on behalf of or for the benefit of the reporting entity.

Effective with the beginning of the 2017-18 school year, the monthly certified statement must include all retirees who are required to be reported to TRS in subsection (a)(2) of this section.

(d) Employers that fail to attain a completed status for the monthly certified statement(s) as required in this section before the eleventh day after the last day of the month or before the seventh day of September for the certified monthly statement for August shall pay to TRS, in addition to the required employer surcharges and any applicable penalty interest on the unpaid amounts, the late fee established in this subsection for each business day that the monthly certified statement fails to attain a completed status. The late fees required to be paid are as follows:

(1) For employers with fewer than 100 employees, the late fee for the first business day the monthly certified statement fails to attain a completed status is \$100. For each subsequent business day that the monthly certified statement fails to attain a completed status, the employer shall pay an additional \$10.

(2) For employers with at least 100 employees but no more than 500 employees, the late fee for the first business day the monthly certified statement fails to attain a completed status is \$250. For each subsequent business day that the monthly certified statement fails to attain a completed status, the employer shall pay an additional \$25.

(3) For employers with more than 500 employees but no more than 1,000 employees, the late fee for the first business day the report or documentation fails to attain a completed status is \$500. For each subsequent business day that the report or documentation fails to attain a completed status, the employer shall pay an additional \$50.

(4) For employers with more than 1,000 employees, the late fee for the first business day the monthly certified statement fails to attain a completed status is \$1,000. For each subsequent business day that the monthly certified statement fails to attain a completed status, the employer shall pay an additional \$100.

(e) In determining the number of employees for purposes of assessing the late fee in subsection (d) of this section, TRS shall base the fee on the number of employees reflected on the employer's monthly certified statement for May of the preceding school year. New employers will pay late fees for the first school year as provided in subsection (d)(1) of this section.

§31.11. Employment Resulting in Forfeiture of Service Retirement Annuity.

(a) A person who retired prior to January 1, 2011, and who is receiving a service retirement annuity may be employed in any capacity in Texas public education without forfeiture of benefits for the months of employment.

(b) A person who retired after January 1, 2011, and who is receiving a service retirement annuity, is not entitled to an annuity payment for any month in which the retiree is employed by a Texas public educational institution, unless the employment meets the requirements for an exception to forfeiture of payments under this chapter. Employment by a Texas public educational institution for purposes of this chapter includes:

(1) effective [Effective] June 20, 2003[~~and for purposes of this chapter~~], employment by a third party entity [~~is considered employment by a Texas public educational institution~~] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003[-];
and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or forgoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) A person who is receiving a service retirement annuity may be employed in private schools, public schools in other states, in private business, or in other entities that are not TRS-covered employers without forfeiting their annuities.

(d) This chapter applies only to persons retired under TRS. It does not apply to persons retired under other retirement or pension systems.

§31.12. Exceptions to Forfeiture of Service Retirement Annuity.

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011, forfeits the annuity for any month in which the retiree is employed by a public educational institution covered by TRS, except in the cases set forth in §31.13 of this chapter (relating to Substitute Service), §31.14 of this chapter (relating to One-half Time Employment), and §31.15 of this chapter (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

(b) Employment by a Texas public educational institution includes:

(1) effective [Effective] June 20, 2003, employment by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003[-]; and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§31.13. Substitute Service.

(a) Any person receiving a service retirement annuity who retired after January 1, 2011, may work in a month as a substitute in a public educational institution without forfeiting the annuity payment for that month.

(b) For purposes of this section, employment~~[Employment by a third party entity is considered employment]~~ by a Texas public educational institution that may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter ~~[unless]~~includes:

(1) employment by a third party entity, unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003 ~~[-and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter.];~~ and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

(d) The exception described in this section and the exception for one-half time employment described in §31.14 of this title (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the other employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.14 of this title may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. However, working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(e) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(f) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

§31.14. One-half Time Employment.

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on as much as a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a Texas public educational institution for purposes of this section includes:

(1) employment by a third party entity, ~~[is considered employment by a Texas public educational institution]~~ unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003[-]; and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in

determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education (including community and junior colleges) in classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are expressed in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit, must be counted based on the number of clock hours worked.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this title (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. However, working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any

amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service).

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

§31.15. Full-time Employment after 12 Consecutive Month Break in Service.

(a) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity complies with subsection (b) of this section, the person may, without forfeiting payment of the annuity for the months of employment, be employed in any capacity in Texas public education, including as much as full-time.

(b) To be eligible to be employed without forfeiting payment of the annuity under subsection (a) of this section, the service retiree must have been separated from service with all Texas public educational institutions for at least 12 full, consecutive calendar months after the effective date of retirement. The 12-month separation period required under §824.602(a)(3), Government Code for the full-time exception may be any 12 consecutive calendar months following the month of retirement. During the separation period, the retiree may not be employed in any position or capacity by a public educational institution covered by TRS.

(1) Employment as a substitute or on a half-time basis under the exceptions provided for in this chapter is considered employment for the purpose of this subsection.

(2) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is considered employment for purposes of this subsection.

(3) Employment by a third party entity is considered employment by a Texas public educational institution for purposes of this subsection unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(4) Effective the beginning of the 2017-18 school year, employment by a Texas public educational institution includes performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for those duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity does not meet the separation from service period required in subsection (b) of this section, the person will forfeit payment of the annuity for any month of full-time employment in Texas public education. In this section full-time employment means any employment that does not meet the substitute service exception as described in §31.13 of this title (relating to Substitute Service) or the one-half time exception in §31.14 of this title (relating to One-half Time Employment).

(1) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is considered employment for purposes of this section and must be reported to TRS as employment for the calendar month in which it is taken.

(2) Employment by a third party entity is considered employment by a Texas public educational institution for purposes of this section and must be reported to TRS as employment

for the calendar month in which it occurs unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(3) Effective the beginning of the 2017-18 school year, employment by a Texas public educational institution includes performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§31.31. Employment Resulting in Forfeiture of Disability Retirement Annuity.

(a) A person receiving a disability retirement annuity forfeits the annuity payment in any month in which the retiree is employed by a public educational institution covered by TRS, unless the employment falls within one of the exceptions set forth in this subchapter.

(b) For purposes of this subchapter, employment ~~[Employment]~~ by a Texas public educational institution includes:

(1) employment by a third party entity ~~[is considered employment by a Texas public educational institution]~~ unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003~~[-]~~; and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or forgoing compensation for the duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

~~(c)(4)~~ A person receiving a disability retirement annuity may not exercise the exception applicable to service retirees in §31.15 of this chapter (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

§31.32. Half-time Employment Up to 90 Days.

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as a one-half time basis. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule; working any part of a day counts as one day towards the 90 day annual limit established in this section. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) For the purposes of this section, employment [Employment] by a Texas public educational institution includes:

(1) employment by a third party entity ~~[is considered employment by a Texas public educational institution]~~ unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003~~[-]~~, and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services in the first 12 consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide and

(A) waiving, deferring, or foregoing compensation;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform after 12 consecutive calendar months after the retiree's effective date of retirement.

(c) Total substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month does not exceed one-half the number of days available that month for work. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. Working any part of a day, including working on a Saturday or Sunday, [as a substitute or half-time] counts as working one day. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(d) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(e) For the purpose of this section, actual course instruction in state-supported colleges (including junior colleges), and universities of classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are measured in course or semester hours shall be counted as a minimum of two clock hours per one course or semester hour in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If the employer has established a greater amount of preparation time for each course or semester hour, the employer's established standard will be used to determine the number of course or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be counted based on the number of clock hours worked.

§31.33. Substitute Service Up to 90 Days.

(a) A person receiving a disability retirement annuity may work as a substitute in a month without forfeiting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute service or combination of substitute service and one-half time employment in the school year as described in subsection (d) may not exceed 90 days. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) For purposes of this section, employment by a Texas public educational institution includes:

(1) employment[~~Employment~~] by a third party entity [~~is considered employment by a Texas public educational institution~~] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003[.], and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services in the first 12 consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide and

(A) waiving, deferring, or foregoing compensation;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform after 12 consecutive calendar months after the retiree's effective date of retirement.

(c)[~~(b)~~] Any disability retiree who reports for duty as a substitute during any day and works any portion of that day shall be considered to have worked one day.

(d) The exception described in this section and the exception for one-half time employment described in §31.32 of this title (relating to Half-time Employment Up to 90 Days) may be used during the same school year. If the substitute service and the other employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis and may not exceed the limit of 90 days for the school year. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.32 of this title may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work and the total number of days worked does not exceed the limit of 90 days for the

school year. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. However, working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked. If the calendar month has an odd number of work days available for work, the retiree is limited to working only one-half the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

§31.34. Employment Up to Three Months on a One-Time Only Trial Basis.

(a) Any person receiving a disability retirement annuity may, without forfeiting payment of the annuity, be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months if the work meets the requirements in subsection (c) of this section and the person complies with the requirements of subsection (d) of this section.

(b) For purposes of this section, employment by a Texas public educational institution includes:

(1) employment[Employment]by a third party entity [is considered employment by a Texas public educational institution]unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003[-]; and

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided

immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c)~~(b)~~ The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(d)~~(c)~~ TRS must receive written notice of the retiree's election to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three month trial period.

(e)~~(d)~~ Working any portion of a month counts as working a full month for purposes of this section.

(f)~~(e)~~ The three month exception permitted under this section is in addition to the 90 days of work allowed in §31.33 of this chapter (relating to Substitute Service up to 90 Days) or §31.32 of this chapter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

(g)~~(f)~~ The trial work period may occur in one school year or may occur in more than one school year provided the total amount of time in the trial period does not exceed three months and the months are consecutive.

(h)~~(g)~~ A disability retiree may elect to work on a one-time only trial basis for as much as full time for a period of no more than three consecutive months for each period of disability retirement subject to the requirements of this section.

§31.41. Return to Work Employer Pension Surcharge.

(a) For school years prior to the 2013-2014 school year, for each report month a retiree who retired September 1, 2005 or after is working for a TRS-covered employer (employer) or third party entity in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Reports shall pay the Teacher Retirement System of Texas (TRS) the surcharge described in this section.

(b) Beginning September 1, 2013, for each report month a retiree is working for an employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month, the employer that reports the retiree on the Employment of Retired Members Report shall pay to TRS a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment). A retiree reported as a substitute must meet the requirements of §31.1(b) of this title (relating to Definitions) for the surcharge not to apply.

(c) The surcharge amount that must be paid by the employer for each retiree working more than the equivalent of four clock hours for each work day in that calendar month is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(d) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(e) The surcharge is not owed by the employer for any retiree who retired from the retirement system before September 1, 2005.

(f) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other employment with the same or another employer or third party entity in the same calendar

month. For each calendar month that the retiree combines substitute service and other employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed on all compensation paid to the retiree, including compensation paid for substitute service. If the employment is with more than one employer, the surcharge is owed by each employer on the compensation paid by that employer.

(g) The surcharge is also owed by the employer on any retiree who is working for a third party entity and performing duties or providing services on behalf of the employer for more than the equivalent of four clock hours for each work day in that calendar month and who is considered an employee of that employer under §824.601(d) of the Government Code. Effective the beginning of the 2017-18 school year, the surcharge is also due on a retiree working as an independent contractor for a Texas public educational institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement and performing duties or providing services for or on behalf of the institution that an employee of the institution would otherwise perform or provide.

(h) Except as provided in subsection (f) of this section relating to combining substitute service with other employment, if a retiree is employed concurrently in more than one position, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position that is not eligible for membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment). If the employment is with more than one employer, the surcharge is owed by each employer.

(j) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(k) For school years prior to the 2013-2014 school year, if a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.



Legal and Compliance

Memorandum

DATE: September 6, 2017

TO: Policy Committee and the Board of Trustees

FROM: Wm. Clarke Howard, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onís, General Counsel

RE: Adoption of Proposed Amendments to Chapter 41
Subchapter A, TRS-Care Rules 41.2, 41.6, and 41.10
Subchapter C, TRS-ActiveCare Rule 41.33
Subchapter D, Repeal of Rule 41.91

BACKGROUND INFORMATION

Staff requested that Brian Guthrie authorize publication for public comment amendments to TRS-Care rules §§ 41.2, 41.6, 41.10, amendments to TRS-ActiveCare rule §41.33, and the repeal of rule § 41.91. These proposed amendments and the proposed repeal of rule § 41.91, marked in Attachment 1 below, in part implement recent legislation passed by the 85th Texas Legislature that took effect on September 1, 2017.

These proposed amendments and the proposed repeal of rule § 41.91 had to be published for public comment in the *Texas Register* for at least 30 days before the Policy Committee and the Board of Trustees (“Board”) can consider their adoption. Because there was not sufficient time for the Policy Committee to authorize publication before final action was needed by the Policy Committee and the Board in late September, staff requested that Brian Guthrie authorize the publication of the proposed amendments and the publication of the proposed repeal under the authority of Article 5, §5.7 of the Bylaws of the Board. This action now positions the Policy Committee and Board to consider the adoption late this month of the proposed amendments and the proposed repeal of rule § 41.91.

As of the September meetings, the proposed amendments to TRS-Care rules §§ 41.2, 41.6, 41.10 and the proposed amendments to TRS-ActiveCare rule §41.33, along with the proposed repeal of rule § 41.91, will have been published for public comment in the *Texas Register* for more than 30 days. To date, TRS has not received any written comments regarding the proposed amendments or the repeal of rule § 41.91. Any written comments that TRS receives after the date of this memorandum will be addressed at the September 2017 meeting.

REQUESTED ACTION

Staff requests the Policy Committee recommend that the Board adopt the proposed amendments to TRS-Care rules §§ 41.2, 41.6, 41.10 and the proposed amendments to TRS-ActiveCare rule §41.33, and recommend that the Board repeal rule § 41.91, as marked in Attachment 1 below.

Further, Staff requests the Board adopt the proposed amendments to TRS-Care rules §§ 41.2, 41.6, 41.10 and the proposed amendments to TRS-ActiveCare rule §41.33, and that the Board repeal rule § 41.91, as marked in Attachment 1 below.

SUMMARY OF THE PROPOSED AMENDMENTS

Presented below are brief summaries of the proposed amendments to the above noted rules:

TRS-Care §41.2, entitled “Additional Enrollment Opportunities”:

The proposed changes to §41.2 address recent legislation and upcoming changes to the TRS-Care plans that will take effect on January 1, 2018.

The proposed, new subsection (a)(9) provides that the entire existing subsection (a) will expire December 31, 2017. Existing subsection (a) addresses the current Age 65 Additional Enrollment Opportunity established under subsections (b), (c), (d), and (e) of Section 1575.161, Insurance Code. Pursuant to HB 3976, enacted during this past legislative session (Regular), these subsections of Section 1575.161 will be repealed effective January 1, 2018.

The proposed, new subsection (b) to this rule addresses the new enrollment opportunity, under HB 3976, provided to retirees that turn 65 years of age. Staff recommends, through the adoption of this new subsection (b), that this enrollment opportunity be extended by Board action to surviving spouses that turn age 65. This enrollment period for retirees and surviving spouses will begin on the date the retiree or surviving spouse reaches 65 years of age and ends 31 calendar days from the end of the month in which the retiree or surviving spouse reaches 65 years of age. This new subsection (b) will become effective January 1, 2018.

Most of the proposed changes in the newly relettered subsection (c) to Rule 41.2 are non-substantive in nature, offered for the sake of clarification. The language being deleted in subsection (c)(1) is no longer needed because the Age 65 Additional Enrollment Opportunity is expiring on 12-31-2017. Also, Staff notes

that going forward, if a retiree or surviving spouse is waiving TRS-Care coverage because of the existence of other health benefit coverage, TRS will no longer require these individuals to indicate this reason in writing. This adjustment, permitted under HIPAA, provides more flexibility to allow TRS-Care participants

to enroll in TRS-Care under a special enrollment event triggered by the loss of other health benefit coverage.

Likewise, the proposed changes in the newly relettered subsections (d) and (e) are clarifications and non-substantive in nature.

TRS-Care -- §41.6, entitled “Required Contributions from Public Schools”:

The proposed changes to §41.6 address recent legislation that raised the public school contribution under Section 1575.204(a) from 0.55 percent to 0.75 percent of the salary of each active employee of the public school. In order to avoid the need to adjust this rule each time this percentage is changed, staff is proposing more flexible language in this rule that allows this percentage to automatically adjust to the then-applicable required amount under Section 1575.204(a), Insurance Code.

TRS-Care -- §41.10, entitled “Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)”:

The proposed deletion in subsection (a)(2) of this rule is consistent with Subsections (a)(2) and (a)(3) of Section 1575.004, Insurance Code, and provides that a disability retiree may enroll in TRS-Care regardless of whether the disability retiree is eligible to enroll as an employee or retiree in a plan provided by ERS, the University of Texas or Texas A & M.

TRS-ActiveCare -- §41.33, entitled “Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program”:

Under the federal Patient Protection and Affordable Care Act (the “ACA”), employers are required to offer affordable coverage to individuals who work an average of more than 30 hours per week; employers risk being subject to penalties for failing to do so.

Under Section 1579.003, Insurance Code, TRS pension retirees who have returned to teaching (“RTT Retirees”) cannot be considered full-time employees under TRS-ActiveCare. However, under state law, TRS is given the discretion to define individuals who qualify as part-time employees, eligible for enrollment in TRS-ActiveCare.

Subsection (6)(C) of this rule contains the definition of a part-time employee established by TRS. Unfortunately, in light of the above-noted ACA mandate and potential penalties, the current definition in Subsection (6)(C) is too narrow; it excludes a number of RTT Retirees from eligibility in TRS-ActiveCare. These exclusions place participating entities in TRS-ActiveCare in the precarious position of being unable to offer TRS-ActiveCare coverage to RTT Retirees who work more than 30 hours per week, thus subjecting these entities to possible penalties under the ACA. Staff is proposing two changes to this rule which broaden the definition of part-time employees to: (i) include individuals who are not eligible for membership in the TRS Pension because of service or disability retirement; and (ii) no longer exclude

individuals who waive or waived coverage under TRS-Care. These changes address the concerns expressed above concerning the potential employer penalties under the ACA.

Comparability of Group Health Coverages offered by school districts that do not participate in TRS-ActiveCare -- §41.91, entitled “Certification of Insurance Coverage”:

Pursuant to amendments to subsections (b) and (d) of Section 22.004, Education Code, made by recently enacted legislation (*i.e.*, SB 1664), TRS is no longer required to enact rules to determine whether a school district’s group health coverage is comparable to the basic health coverage provided by the Employees Retirement System of Texas under Chapter 1551, Insurance Code. Also, districts that do not participate in TRS-ActiveCare are no longer required to report to TRS the details of their efforts to offer comparable coverage to their employees. Accordingly, this rule is no longer mandated or needed under applicable law. Staff is recommending that TRS repeal this rule.

RECOMMENDATION

Staff recommends that the Policy Committee, in turn, recommend that the Board adopt the proposed amendments to TRS-Care rules §§ 41.2, 41.6, 41.10 and the proposed amendments to TRS-ActiveCare rule §41.33, and recommend that the Board repeal rule § 41.91, as marked in Attachment 1 below; further, Staff recommends that the Board itself adopt the proposed amendments to TRS-Care rules §§ 41.2, 41.6, 41.10 and the proposed amendments to TRS-ActiveCare rule §41.33, and that the Board repeal rule § 41.91, as marked in Attachment 1 below.

ATTACHMENT 1

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41 HEALTH CARE AND INSURANCE PROGRAMS

RULES §41.2. Additional Enrollment Opportunities, §41.6. Required Contributions from Public Schools, §41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program, and §41.91. Certification of Insurance Coverage.

§41.2. Additional Enrollment Opportunities.

(a) Age 65 Additional Enrollment Opportunity. "Eligible participants," as defined in paragraph (1) of this subsection, have an additional enrollment opportunity in TRS-Care as described in this subsection when they become 65 years old (the "Age 65 Additional Enrollment Opportunity").

(1) For purposes of this subsection, the term "eligible participants" means:

(A) all TRS retirees who are enrolled in TRS-Care;

(B) dependents, as defined in Insurance Code, §1575.003, who are enrolled in TRS-Care and who are eligible to enroll in TRS-Care in their own right as a TRS service or disability retiree; and

(C) surviving spouses, as defined in Insurance Code, §1575.003 who are enrolled in TRS-Care.

(2) Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who become 65 years old after that date have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(3) Those eligible participants who enroll in TRS-Care after August 31, 2004, and who become 65 years old after the date of their enrollment have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(4) The Age 65 Additional Enrollment Opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).

(5) An eligible participant who is not enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:

(A) in any plan, for which he or she is eligible under law, located in the next-higher TRS-Care coverage tier (level of coverage), as determined by TRS-Care; and

(B) add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).

(6) An eligible participant who is enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:

(A) in any plan, for which he or she is eligible under law, located in any TRS-Care coverage tier (level of coverage); and

(B) add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).

(7) An eligible participant, at the time of his or her Age 65 Additional Enrollment Opportunity, can:

(A) choose to remain in the same TRS-Care coverage tier (level of coverage);

(B) enroll in any plan, for which he or she is eligible under law, located in that same TRS-Care coverage tier (level of coverage); and

(C) add dependent coverage in any plan, for which the dependent is eligible under law, in that same coverage tier (level of coverage).

(8) The period to exercise the Age 65 Additional Enrollment Opportunity for eligible participants described in paragraph (2) or (3) of this subsection expires at the end of the later of:

(A) the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or

(B) the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.

(9) This subsection expires December 31, 2017.

(b) Age 65 Enrollment Opportunity.

(1) Upon reaching 65 years of age, a retiree or surviving spouse is eligible to be enrolled in TRS-Care under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1575, Insurance Code (the "Age 65 Enrollment Opportunity"). The retiree or surviving spouse may select any coverage provided under TRS-Care for which the individual or a dependent is otherwise eligible.

(2) The enrollment period for an individual who becomes eligible for coverage under paragraph (1) immediately above shall begin on the date the individual reaches 65 years of age and ends 31 calendar days from the end of the month in which the individual reaches 65 years of age. To make an effective election, a completed TRS-Care application must be received by TRS no later than the end of this enrollment period.

(3) This subsection becomes effective January 1, 2018.

(c)[(b)] Special Enrollment Opportunity under the Health Insurance Portability and Accountability Act (HIPAA).

(1) An individual who becomes eligible for coverage under the special enrollment provisions of ~~[the Health Insurance portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996))]~~ HIPAA, ~~including a dependent whose coverage under TRS-Care was waived due to the existence of other coverage for the dependent during the Age 65 Additional Enrollment Opportunity described in subsection (a) of this section,~~] may elect to enroll in TRS-Care.

(2) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event under paragraph (1) immediately above shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed TRS-Care application must be received by TRS within this 31-day period.

~~(d)~~(e) Enrollment Opportunity Established by TRS. ~~An~~[if an] eligible individual~~[TRS retiree or his eligible dependent does not have either an Age 65 Additional Enrollment Opportunity or a special enrollment event, then he]~~ may enroll in TRS-Care ~~[only]~~during an ~~[a subsequent]~~ enrollment period established by TRS.

~~(e)~~(d) This section does not affect the right of a TRS service retiree or surviving spouse enrolled in a TRS-Care plan~~[coverage tier (level of coverage)]~~ to drop coverage~~[, select a lower coverage tier (level of coverage),]~~ or drop dependents at any time.

§41.6. Required Contributions from Public Schools.

(a) On a monthly basis, each public school shall contribute the then-applicable required amount~~[0.55%]~~ under Section 1575.204(a), Insurance Code, of the salary of each active employee to TRS for deposit in the Retired School Employees Group Insurance Fund. The public school shall make the contribution at the same time and in the same manner in which the public school delivers retirement contributions. Any waiver granted to a public school under Government Code §825.408(a) does not apply to the contribution under this section.

(b) For purposes of this section, "active employee" means a contributing member of TRS who is employed by a public school and is not entitled to coverage under a plan provided under Chapter 1551 or Chapter 1601, Insurance Code.

(c) For purposes of this section, "public school" means a school district; another educational district whose employees are TRS members; a regional education service center established under Chapter 8, Education Code; or an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(d) TRS may take corrective action against a public school that fails to make the required contribution in accordance with the requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.

§41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).

(a) If they meet the applicable requirements set out in this section, the following persons are eligible to enroll in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care):

(1) service retirees of the Teacher Retirement System of Texas (TRS) who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551), or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601);

(2) disability retirees of TRS [~~who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551) or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601)~~];

(3) surviving spouses of deceased service or disability retirees of TRS or of certain deceased active TRS members; and

(4) surviving dependent children of deceased service or disability retirees of TRS or of certain deceased active TRS members.

(b) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires before September 1, 2004 must have 10 years of service credit for actual service in the public schools of Texas, which can include only the following types of service credit:

(1) service credit for actual service in Texas public schools;

(2) service credit transferred to TRS from the Employees Retirement System of Texas (ERS);

(3) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(4) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(5) service credit for substitute service that the member has purchased and that has been credited to the member's account; and

(6) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account.

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 must meet the following requirements:

(1) at the time of retirement, a member has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) service credit for actual service in Texas public schools;

(B) service credit transferred to TRS from ERS;

(C) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(D) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(E) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(F) up to five years of military service credit that the member has purchased and that has been credited to the member's account, or up to five years of re-employed veteran's (USERRA)

service credit, whether purchased or not, evidence of which is provided by the service retiree to the satisfaction of TRS; and

(2) at the time of retirement, a member either:

(A) meets the Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit in the system noted in subparagraph(C) of this paragraph, equal or exceed 80, regardless of whether the member had a reduction in the retirement annuity for early age retirement; or

(B) has 30 or more years of service credit in the system noted in subparagraph (C) of this paragraph.

(C) for purposes of this paragraph (2) of this subsection, service credit in the system includes the following:

(i) the types of service credit in the system listed in paragraph (1) of this subsection;

(ii) out-of-state service credit under §25.81 of this title (relating to Out-of-State Service Eligible for Credit);

(iii) credit for developmental leave under §25.151 of this title (relating to Developmental Leave, Eligibility, Cost);

(iv) work experience service credit under §25.161 of this title (relating to Work Experience Service Credit);

(v) state personal or sick leave credit under §25.162 of this title (relating to State Personal or Sick Leave Credit);

(vi) credit under the service credit purchase option under §25.163 of this title (relating to Service Credit Purchase);

(vii) credit for service during a school year with a membership waiting period under §25.164 of this title (relating to Credit for Service During School Year With Membership Waiting Period); and

(viii) any other type of service credit purchased for equivalent or special service credit allowed by law or by rule adopted by TRS.

(d) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2004, but on or before August 31, 2005, must meet, on September 1, 2005, either of the following requirements:

(1) the 10-year service credit requirement of subsection (b) of this section; or

(2) the 10-year service credit requirement of subsection (c)(1) of this section and one of the requirements of subsection (c)(2) of this section.

(e) Any service retiree of TRS who is enrolled in TRS-Care on August 31, 2005, maintains eligibility for TRS-Care on or after September 1, 2005, unless and until an applicable rule or law prohibits continued enrollment in TRS-Care.

(f) For purposes of this section, "public school" is an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(g) A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(h) A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or disability retiree was enrolled, eligible to enroll, or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(i) A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

(1) died on or after September 1, 1986;

(2) had 10 or more years of actual service credit in TRS; and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(j) A surviving dependent child of a deceased TRS retiree or deceased active TRS member is eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (h) of this section or the deceased active member met the conditions of subsection (i) of this section. A surviving dependent child must also meet the following conditions:

(1) the child must be a natural or adopted child of or a child who was lawfully placed for legal adoption with the deceased retiree or member or must be a foster child, stepchild, or other child who lived in a parent-child relationship with the retiree or member; and

(2) the child must be under age 26, or if 26 years of age or older, must be unmarried and have a mental disability or is physically incapacitated to such an extent as to have been dependent upon the deceased retiree or active member for support at the time of the retiree's or active member's death, as determined by TRS as trustee and as described by Insurance Code, §1575.003.

(k) Combined service credit under the Proportionate Retirement Program may not be used to establish eligibility for TRS-Care.

§41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program.

The following words and terms when used in this subchapter or in connection with the administration of Chapter 1579, Insurance Code, shall have the following meanings unless the context clearly indicates otherwise.

(1) Dependent--Only those individuals described by §1579.004, Insurance Code, and an individual under 26 years of age ("child") who is described by any one of the following subparagraphs (A), (B), or (C) at all times during which the child is receiving coverage under TRS-ActiveCare.

(A) A child under the legal guardianship of a full-time or part-time employee;

(B) A full-time or part-time employee's grandchild whose primary residence is the household of that full-time or part-time employee if the grandchild is a dependent of the full-time or part-time employee for federal income tax purposes for the reporting year in which coverage of the grandchild is in effect; or

(C) A child in a regular parent-child relationship with a full-time or part-time employee, meaning that the child's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the child's support, neither of the child's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the child's medical care.

(D) For clarification and without intending to identify all persons who are not a Dependent for purposes of coverage, even though the individual may be in a dependent relationship with a full-time or part-time employee, the following are not included in the definition of Dependent in this section:

(i) Other than the spouse of a full-time or part-time employee, a Dependent does not include an individual who is a "participating member" as defined in paragraph (5) of this section.

(ii) A Dependent does not include a parent or grandparent of a full-time or part-time employee.

(iii) A Dependent does not include a brother or a sister of a full-time or part-time employee unless the brother or sister is an unmarried individual under 26 years of age who is either:

(I) under the legal guardianship of a full-time or part-time employee; or

(II) in a regular parent-child relationship with a full-time or part-time employee, meaning that the brother or sister's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the brother or sister's support, neither of the brother or sister's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the brother or sister's medical care.

(2) Full-time employee--A participating member who:

(A) is currently employed by a participating entity;

(B) is employed in a position that is eligible for membership in the Teacher Retirement System of Texas; and

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(3) HMO--A health maintenance organization holding a valid certificate of authority issued by the Texas Department of Insurance and approved by TRS to provide health care benefits to eligible full-time and part-time employees and their eligible dependents.

(4) Participating entity--An entity participating in TRS-ActiveCare including a school district; another educational district whose employees are members of the retirement system; a regional education service center; and a charter school that meets the requirements of Chapter 1579, Insurance Code. An entity is considered to be participating in TRS-ActiveCare on and after the first date coverage becomes effective for its employees.

(5) Participating member--A person defined by §822.001 and §822.002, Government Code, whose membership in the retirement system has not been terminated as described by §§822.003 - 822.006, Government Code, and who is required to contribute to the Teacher Retirement System of Texas pension trust fund in accordance with §825.403, Government Code.

(6) Part-time employee--An individual who:

(A) is currently employed by a participating entity for 10 hours or more each week;

(B) is employed in a position that is not eligible for membership in the Teacher Retirement System of Texas or is not eligible for membership in the Teacher Retirement System of Texas because of a service or disability retirement; and

~~[(C) is not a retiree who waived coverage under the health benefits program under the Texas Public School Retired Employees Group Benefits Act, Chapter 1575, Insurance Code, also known as TRS-Care; and]~~

~~(C)[(D)] is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).~~

(7) Plan year--A plan year begins on the first day of September and ends on the last day of the following August.

(8) TRS-ActiveCare--The health benefits program under the Texas School Employees Uniform Group Health Coverage Act, Chapter 1579, Insurance Code.

(9) Trustee or TRS--The Teacher Retirement System of Texas acting in its capacity as trustee under Chapter 1579, Insurance Code.

~~§41.91. Certification of Insurance Coverage.~~

~~(a) When used in this section, the term "school district" includes a school district, another educational district whose employees are members of the Teacher Retirement System of Texas (TRS), and an open enrollment charter school established under Subchapter D, Chapter 12, Education Code that meets the requirements of Section 1579.154, Insurance Code.~~

~~(b) This section applies only to school districts that do not participate in the health benefits program offered under Chapter 1579, Insurance Code.~~

~~(c) Each school district shall determine the comparability of the group health coverage it offers to its employees to the coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). As required by the Education Code, §22.004, each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A,~~

~~Chapter 1364, and Subchapter A, Chapter 1366, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental diagnostic procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). In addition to these requirements, the following factors shall be considered by each school district in determining comparability:~~

- ~~-(1) the deductible amount for service provided inside and outside of the network;~~
- ~~-(2) the coinsurance percentages for service provided inside and outside of the network;~~
- ~~-(3) the maximum amount of coinsurance payments a covered person is required to pay;~~
- ~~-(4) the amount of the co-payment for an office visit;~~
- ~~-(5) the schedule of benefits and the scope of coverage;~~
- ~~-(6) the lifetime maximum benefit amount; and~~
- ~~-(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self insurance.~~

~~(d) Each school district shall be responsible for developing a methodology and criteria for comparison determination. This methodology will include an evaluation of relevant variables with respect to applicable factors stated in subsection (c) of this section.~~

~~(e) Each school district shall prepare a report by March 1 of each even-numbered school year, based on the district group health coverage plan in effect during that current plan year, that includes:~~

~~-(1) appropriate documentation of:~~

~~—(A) the school district's contract for group health coverage with a provider licensed to do business in Texas by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or~~

~~—(B) a resolution of the board of trustees of the school district authorizing a self-insurance plan for school district employees and of the school district's review of its ability to cover the liability assumed;~~

~~-(2) the schedule of benefits;~~

~~-(3) the premium rate sheet, including the amount paid by the school district and employee;~~

~~-(4) the number of employees covered by the health coverage plan offered by the school district;~~

~~-(5) information concerning the ease of completing the report required in subsection (g) of this section; and~~

~~-(6) the compliance statement required in subsection (g) of this section.~~

~~(f) By March 1 of each even-numbered school year, each school district shall make the report required under subsection (e) of this section available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus associated with or in the school district. By such date, each school district shall also post this report on the school district's Internet website, if the school district maintains a website; and, in lieu of delivering a copy of this report to TRS, the school district shall provide a copy of the report upon written request from TRS.~~

~~(g) Each school district shall report, using a uniform reporting form or method of reporting prescribed by TRS, the district's compliance with Education Code, §22.004, to the executive director of TRS by March 1 of each even-numbered school year. This compliance statement must state whether or not the school district has complied with the requirements of Education Code, §22.004, specifically as to whether or not the school district:~~

~~–(1) provides health coverage to its employees that is comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code); and~~

~~–(2) has complied with the other requirements of this section.~~



Legal & Compliance

Memorandum

DATE: September 1, 2017

TO: Policy Committee of the Board of Trustees

FROM: Rebecca M. Smith, Assistant General Counsel

COPY: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Carolina de Onis, General Counsel

RE: Proposed new rule: § 43.4, Decisions Subject to Review by an Adjudicative Hearing

REQUESTED ACTION

Staff requested that Brian Guthrie authorize publication for public comment of proposed amendments to rule § 43.4, relating to Decisions Subject to Review by an Adjudicative Hearing. The proposed rule amendments implement the authority provided in SB 1663 for the Board to waive the requirement of an appeal to the Board from a decision by the Executive Director or his/her designee on certain matters. The matters regard the sufficiency of a court order to authorize a change of retirement plan or beneficiary of a joint and survivor annuity when the beneficiary is the spouse or former spouse. The bill takes effect on September 1, 2017. The proposed new rule had to be published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider its adoption. Because there was not sufficient time for the Policy Committee to authorize publication before the Board of Trustees will consider the proposed new rule for adoption in September, staff requested Brian Guthrie to authorize the publication of the proposed new rule under the authority of Article 5, § 5.7 of the Bylaws of the Board of Trustees so that the policy committee and board may consider its adoption at the September 2017 board meeting.

The proposed rule amendment will have been published for public comment in the *Texas Register* for at least 30 days before the policy committee and board consider its adoption. The proposed amendment was published on August 18, 2017 at 42 TexReg 4111. To date TRS has not received any written comments regarding the proposed amendment. Any written comments that TRS receives after the date of this memorandum will be addressed in a separate document that will be available for your review at the September meeting.

SUMMARY OF PROPOSED AMENDMENTS

The pension plan terms allow a retiree to change the selection of an Option 1, 2, or 5 retirement plan (joint and survivor annuity plans) selected at retirement to a standard annuity. If the beneficiary is the spouse or former spouse, the beneficiary must consent or a court with authority over the marriage of the member and the beneficiary must authorize the change. The plan terms also allow a retiree to change the beneficiary of an Option 1, 2, or 5 retirement plan under certain circumstances. Again, if the beneficiary is the spouse or former spouse, the beneficiary must consent or a court with authority over the marriage of the member and the beneficiary must authorize the change.

Currently, an attorney assigned to the Legal-Benefits area in Legal & Compliance reviews the order and makes a recommendation regarding the sufficiency of the order. In the event of a challenge to the determination, current rules regarding administrative appeals apply. Staff recommends that the Board adopt the proposed change to § 43.4 to avoid the Board having to determine whether an order is legally sufficient to authorize the retiree to change the plan or the beneficiary when the retirement plan selected is an Option 1, 2, or 5. The current rule implements the authority of the Board to waive an appeal to the Board regarding a determination by TRS that a domestic relations order is a qualified order. If the proposed changes are adopted, the final decision regarding the sufficiency of the order related to a plan or beneficiary change would be made by the Executive Director or his/her designee. After a motion for reconsideration regarding that decision is filed, the proposed rule authorizes the petitioner to pursue any further review by filing suit in Travis County.

§43.4. Decisions Subject to Review by an Adjudicative Hearing.

(a) Except as provided in subsection (b) of this section, a[A] person adversely affected by a final administrative decision of the Teacher Retirement System of Texas (TRS)[TRS] relating to the pension plan on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan may appeal the decision and request an adjudicative hearing with regard to the following:

- (1) any matter related to a member's service or disability retirement, death or survivor benefits, or request for refund of accumulated contributions;
- (2) the eligibility of a person for membership in TRS;
- (3) the amount of annual compensation credited by TRS;
- (4) the amount of deposits or fees required of a member;
- (5) any matter involving the granting, purchase, transfer, or establishment of service credit;
- (6) any application for correction of error in the file of a member, beneficiary, or alternate payee, other than a determination of whether an order is a qualified domestic relations order;
- (7) the cancellation or suspension of retirement, survivor, or death benefits; or
- (8) any other matter affecting eligibility for retirement and related disability and death benefits or the amount of such benefits payable under the laws governing TRS.

(b) A determination by the executive director or the executive director's designee regarding whether a court with jurisdiction over the marriage of a retiree and the beneficiary of an optional annuity selected by the retiree under §824.204(c)(1), (c)(2), or (c)(5) or an optional disability annuity selected by the retiree under §824.308(c)(1), (c)(2), or (c)(5) has approved or ordered a change in retirement plan under §824.1012, Government Code, or a change in

beneficiary under §824.1013, Government Code, is a final decision by TRS. No appeal to the board of trustees of TRS is authorized. A party adversely affected by a determination of the executive director or the designee must file a motion for reconsideration with the executive director no later than 25 days after the date such a determination is rendered if the party wishes to contest the determination.